

Pt. 1945

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assisted _____

Racial composition:

White _____

Black _____

Hispanic..... _____

Am. Indian..... _____

Other..... _____

III. Description of types of housing preservation provided:

| Housing preservation activity | | Financial assistance | | |
|-------------------------------|-------------------------|----------------------|-------|-------|
| Item | Cost of materials/labor | HPG | Other | Total |

IV. Objectives for next period:

LoansNo. _____ \$ _____

Grants.....No. _____ \$ _____

Other subsidy.....No. _____ \$ _____

TotalsNo. _____ \$ _____

V. Project summary:

| | No. homeowners | HPG funds | Other |
|--|----------------|-----------|----------|
| Assistance objectives of project | | \$ _____ | \$ _____ |
| Assistance to date | | _____ | _____ |
| Assistance during next period | | _____ | _____ |
| Average amount of HPG assistance | | | |
| Per unit provided (program to date) (per unit) | \$ _____ | | |

VI. Narrative:

- A. Significant accomplishments.
- B. Problem areas.
- C. Proposed changes/assistance needed, etc.
- D. Status of implementing environmental and historic preservation requirements. Include number of historic properties assisted.

PART 1945—EMERGENCY

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- 1945.183 Loan approval or disapproval.
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- 1945.185 Actions after loan approval.
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- 1945.188 Chattel lien search.
- 1945.189 Loan closing.

1945.190 Revision of the use of EM loan funds.

1945.191 [Reserved]

1945.192 Loan servicing.

1945.193–1945.199 [Reserved]

1945.200 OMB control number.

EXHIBITS A–C TO SUBPART D [RESERVED]

EXHIBIT D TO SUBPART D—EMERGENCY LOANS FOR CITRUS GROVE REHABILITATION AND/OR REESTABLISHMENT

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1980.

SOURCE: 46 FR 28331, May 26, 1981, unless otherwise noted.

Subpart A—Disaster Assistance—General

SOURCE: 53 FR 30384, Aug. 11, 1988, unless otherwise noted.

§ 1945.1 [Reserved]

§ 1945.2 Purpose.

This subpart describes and explains the types of incidents which can result in an area being determined a disaster area, thereby making qualified farmers in such areas eligible for Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 Emergency (EM) loans. With respect to natural disasters, it sets forth the responsibility of the Secretary of Agriculture; the factors used in making a natural disaster determination; the relationship between FmHA or its successor agency under Public Law 103-354 and the Federal Emergency Management Agency (FEMA); the method for establishing and using Emergency Loan Support Teams (ELST) and Emergency Loan Assessment Teams (ELAT); the training of FmHA or its successor agency under Public Law 103-354 personnel; and disaster related public information functions. The natural disaster determinations/notifications made under this subpart do not apply to any program other than the FmHA or its successor agency under Public Law 103-354 EM loan program. FmHA or its successor agency under Public Law 103-354's policy is to make EM loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract) as provided by law.

§§ 1945.3–1945.4 [Reserved]

§ 1945.5 Abbreviations.

The following abbreviations are used in this subpart.

(a) ASCS—Agricultural Stabilization and Conservation Service.

(b) DAR—Damage Assessment Report.

(c) ELAT—Emergency Loan Assessment Team.

(d) ELST—Emergency Loan Support Team.

(e) EM—Emergency.

(f) EOH—USDA Emergency Operations Handbook.

(g) FAC—Food and Agriculture Council.

(h) FCIC—Federal Crop Insurance Corporation.

(i) FCO—Federal Coordinating Officer.

(j) FEMA—Federal Emergency Management Agency.

(k) FmHA—Farmers Home Administration or its successor agency under Public Law 103-354.

(l) LFAC—Local Food and Agriculture Council.

(m) NASS—State Statistical Office of the USDA National Agricultural Statistics Service.

(n) OMB—Office of Management and Budget.

(o) SBA—Small Business Administration.

(p) SFAC—USDA State Food and Agriculture Council.

(q) USDA—United States Department of Agriculture.

§ 1945.6 Definitions.

The following definitions are applicable to this subpart:

(a) *Applicant*. The person or entity carrying on the farming operation at the time of the disaster and requesting EM loan assistance from FmHA or its successor agency under Public Law 103-354.

(b) *County*. A local administrative subdivision of a State or a similar political subdivision of the United States.

(1) *Primary county*. A county determined to be a disaster area.

(2) *Contiguous county*. A county that touches a primary county at any point.

(c) *Disaster*. A natural disaster, as determined by the Secretary of Agriculture or the FmHA or its successor agency under Public Law 103-354 Administrator, or a major disaster or emergency declared by the President.

(1) *Major disaster*. Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the "Disaster Relief Act of 1974," above and beyond normal emergency services available from Federal, State and local governments.

(2) *Presidential emergency*. Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which is of such magnitude that the President makes a declaration requiring Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety, or to avert or lessen the threat of a disaster.

(3) *Natural disaster*. A disaster in any part of the United States in which unusual and adverse weather conditions or other natural phenomena have substantially affected farmers by causing severe physical property losses and/or severe production losses within a county. Except where otherwise specified, the use of the term county or similar political subdivision is for administrative purposes only.

(i) Unusual and adverse weather conditions or natural phenomena include such things as:

(A) A major single natural occurrence or event such as a blizzard, cyclone, earthquake, hurricane or tornado.

(B) A single storm, or series of storms, accompanied by severe hail, excessive rain, heavy snow, ice and/or high wind.

(C) An electrical storm.

(D) A severe weather pattern over a period of time which, due to excessive

rainfall, unusual lack of rainfall, or periods of high or low temperatures, causes flooding, substantial water damage, drought or freezing, or which results in the spreading and flourishing of insects or pests, or in plant or animal diseases spreading into epidemic proportions, or prevents the control of fire, however caused.

(ii) Severe *physical* property losses are those which the Administrator determines prior to a natural disaster determination by the Secretary, to be severe, and to have caused extensive damage to or destruction of, physical farm property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock, livestock products; poultry; poultry products; growing crops (see § 1945.163(b)(11) of subpart D of part 1945 of this chapter); harvested crops, and supplies which, if not repaired or replaced, would make it impossible for farmers affected by the unusual and adverse weather conditions to continue operating their farms on a sound basis.

(iii) Severe *production* losses within a county are those in which either:

(A) The Secretary determines that there has been a reduction countywide of at least 30 percent of the normal year's dollar value of all crops, including hay and pasture, and the crops could not be replanted or replaced with a substitute crop, or

(B) The Secretary determines that there has been a 30 percent loss countywide in the normal year's dollar value of a single enterprise (as defined in § 1945.154(a) of subpart D of part 1945 of this chapter); or

(C) The Secretary, after exercising discretion, determines that, although the conditions set forth in § 1945.6(c)(3)(iii)(A) and (B) of this subpart have not been met, the unusual and adverse weather conditions or natural phenomena have resulted in such significant production losses, or have produced such extenuating circumstances as to warrant a finding that a natural disaster has occurred. In making this determination, the Secretary may request the Administrator to provide for consideration such factors as the nature and extent of production losses; the number of farmers

who have sustained qualifying production losses; the number of farmers in that other lenders in the county indicate they will not be in position to finance; whether the losses will cause undue hardship to a certain segment of farmers in the county; whether damage to particular crops has resulted in undue hardship; whether other Federal and/or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and the demand for EM loans; and any other factors considered relevant. The Secretary will consider the information set forth in § 1945.6(i) of this subpart in deciding whether a natural disaster has occurred.

(4) *Potential natural disaster.* Unusual and adverse weather conditions or natural phenomena that have caused physical and/or production losses, but which have not yet been examined by the Secretary or the Administrator for consideration as a natural disaster.

(d) *Disaster area(s).* The county(ies) declared/designated as a disaster area for EM loan assistance as a result of disaster related losses. This included counties named as contiguous to those counties declared/designated as disaster areas.

(e) *Farmers.* Individuals, cooperatives, corporations, partnerships or joint operations who are farmers, ranchers, or aquaculture operators actively engaged in their operation at the time a disaster occurs.

(f) *Incidence period.* The specific date or dates during which a disaster occurred.

(g) *National Office.* The Director, Emergency Designation Staff.

(h) *Normal year's dollar value.* The FmHA or its successor agency under Public Law 103-354 National Office will determine the normal year's dollar value by establishing a normal year yield and price. Normal year yield will be the average yield of the 5 years immediately preceding the disaster year for each cash crop, including hay and pasture, grown in the county. The price will be the average commodity price for the 36 months immediately preceding the disaster year for each crop. Yields and prices used to establish the value or normal production will be obtained from the NASS. In cases where

crops produced and/or prices are not available from NASS, the information will be obtained from other reliable sources. Yields used to establish the disaster year's production will be obtained from DARS which are prepared by the LFACs and SFACs. Prices used to establish the value of disaster year production will be the same as those used to establish normal year values.

(i) *Substantially affected.* A farmer applicant has been substantially affected when there has been a disaster as defined in paragraph (c) of this section, and the applicant has sustained qualifying physical and/or production losses, as defined in § 1945.154(a) of subpart D of part 1945 of this chapter.

(j) *Termination date.* The date specified in a disaster declaration/determination/notification which establishes the final date after which EM loan applications can no longer be accepted. For both physical and production losses, the termination date will be 8 months from the date of the disaster declaration/determination/notification.

(k) *United States or State.* Each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[53 FR 30384, Aug. 11, 1988, as amended at 58 FR 26681, May 5, 1993]

§§ 1945.7-1945.17 [Reserved]

§ 1945.18 United States Department of Agriculture (USDA) Food and Agriculture Council (FAC).

There is a USDA FAC established by the Secretary to serve every State and every County in the United States. The FACs are responsible for reporting the occurrence of and assessing the damage caused by potential disasters, as required to ensure that the Department's disaster programs are implemented when and where needed; to coordinate the Department's EM disaster programs with those of other Federal departments and agencies; and to provide personnel, as needed and requested by FEMA, to help staff disaster application centers in major disaster areas.

(a) *State Food and Agriculture Council (SFAC).* The SFACs are composed of

representatives of the several USDA agencies having emergency program responsibilities at the State level. The vice chairpersons, Emergency Programs, of the SFACs are the ASCS State Executive Directors. FmHA or its successor agency under Public Law 103-354 State Directors are members of the SFACs.

(b) *Local Food and Agriculture Council (LFAC).* These councils are composed of representatives of the several USDA agencies having available personnel at the County level. The chairpersons of the LFACs, in most cases, are the ASCS County Executive Directors. The FmHA or its successor agency under Public Law 103-354 County Supervisors are members of the LFACs.

(c) *FAC policies and procedures.* These policies and procedures are set forth in the USDA Emergency Operations Handbook (EOH), available in any ASCS or FmHA or its successor agency under Public Law 103-354 Office.

§ 1945.19 Reporting potential natural disasters and initial actions.

(a) *Purpose.* The purpose of reporting potential natural disasters is to provide a systematic procedure for rapid reporting of the occurrence and extent of damage and loss caused by such events which may result in a natural disaster determination.

(b) *Responsibility for assessing and reporting disasters.* USDA SFACs and LFACs representing their members agencies are best qualified at the State and County levels to accomplish the assessment of agricultural production losses resulting from a potential natural disaster. These councils are charged with the responsibility of reporting the occurrence of and assessing the damage caused by disasters and will perform this responsibility under policies and procedures as set forth in the EOH.

(c) *Actions to be taken.* Immediately after the occurrence of a potential natural disaster:

(1) When physical losses only occur, the FmHA or its successor agency under Public Law 103-354 County Supervisor will report to the State Director who will advise the Administrator that there has been a potential natural disaster with physical property losses to one or more farmers. This report

must be made to the Administrator within 3 months from the last day of the disaster incidence period. Upon receiving the report, the Administrator will decide whether a natural disaster has occurred. If it has, the Administrator will make EM loans available to any otherwise qualified applicant who has suffered qualifying physical losses. Availability of EM loans assistance under this Administrator action shall be limited to physical losses only. Notices that EM loans are available will identify the county in which the unusual and adverse weather condition, or natural phenomenon has occurred and also each contiguous county.

(2) When physical and/or production losses occur, the FmHA or its successor agency under Public Law 103-354 County Supervisor will report to the LFAC chairperson, as specified in the EOH, all substantial physical property loss, damage or injury and severe production losses that have occurred in the County Office area. The County Supervisor will assist the LFAC in preparing the 24-hour report required in paragraph (c)(3) of this section. If the LFAC has not completed its 24 hour report within two workdays after the occurrence of a potential natural disaster, the County Supervisor will report to the State Director of Form FmHA or its successor agency under Public Law 103-354 1945-27, "Report of Natural Disaster." In urgent situations, the report may be made by telephone, followed by the LFAC report or Form FmHA or its successor agency under Public Law 103-354 1945-27. Either of these reports will be based on information obtained from personal knowledge and from farmers, agricultural and community leaders, and from any other personally contacted reliable source(s). The County Supervisor will convey to the LFAC chairperson all information pertaining to the potential disaster and provide the chairperson with a copy of Form FmHA or its successor agency under Public Law 103-354 1945-27, if prepared.

(3) The LFAC will report the potential natural disaster, in accordance with the EOH, to:

- (i) The SFAC, Vice Chairperson; and
- (ii) Appropriate County Government representative(s).

(4) The SFAC will provide copies of the LFAC report to:

(i) The USDA Washington Offices of ASCS, FmHA or its successor agency under Public Law 103-354 and Office of Intergovernmental Affairs; and

(ii) The State Governor's Emergency Coordinator and the State Department of Agriculture.

(5) The FmHA or its successor agency under Public Law 103-354 State Director will inform the National Office of each potential natural disaster as soon as possible and forward to the National Office a copy of the LFAC report or Form FmHA or its successor agency under Public Law 103-354 1945-27, with any attachments, and supplemented with the State Director's comments and recommendations. The State Director must include a statement as to the number of farmers, ranchers, and aquaculture operators affected by the potential natural disaster. In urgent situations, the State Director will report to the National Office, Emergency Designation Staff, by telephone, and immediately thereafter send a written report to the National Office, Emergency Designation Staff. The State Director will continually notify the SFAC Vice Chairperson, Emergency Programs, of any additional information received concerning the potential natural disaster.

(6) When inquiries are received from persons affected by a potential natural disaster, they will be provided the following information:

(i) By the County Office:

(A) The kind of assistance that will be available if the President declares a major disaster or emergency, or if the Secretary determines that a natural disaster has occurred.

(B) Whether or not physical property loss EM loans are available.

(C) That applications for EM loans may be filed for future processing if such loans are made available, or may be filed at a later date after the necessary determinations have been made.

(D) Whether regular FmHA or its successor agency under Public Law 103-354 farm loan assistance is available.

(ii) State Office, or the National Office, will furnish the same information as the County Office, or will refer the

person to the appropriate County Office.

(7) When inquiries are received from a Governor, a County Governing Body or Indian Tribal Council concerning a potential natural disaster, they will be informed of the procedure for making EM loans available.

(8) The actions required in paragraph (b) of this section will be taken even if the Governor of a State has requested the President to declare a county(ies) a major disaster or Presidential emergency area.

§ 1945.20 Making EM loans available.

EM loans will be made available to applicants having qualifying severe physical and/or production losses within a county named by FEMA as eligible for Federal assistance under a major disaster or emergency declaration by the President; or under a natural disaster determination by the Secretary of Agriculture, pursuant to § 1945.6(c)(3)(iii) of this subpart; and to applicants having qualifying severe physical property losses when, prior to action by the President or the Secretary, the FmHA or its successor agency under Public Law 103-354 Administrator has determined (pursuant to § 1945.6(c)(3)(ii) of this subpart) that such losses have occurred as a result of a natural disaster. Any determination made by the Secretary or the Administrator, pursuant to this subpart may be revised or reversed upon the receipt of new facts which establish that a change is warranted. FmHA or its successor agency under Public Law 103-354's policy is to make loans to any otherwise qualified applicant. When a county has been designated/declared a disaster area where eligible farmers may qualify for EM loans due to a disaster(s) occurring on or after May 31, 1983, under this section, all other counties contiguous to the eligible county(ies) are also named as areas where EM actual loss loans may be made to applicants whose operations have been substantially affected by the same disaster(s).

(a) *Declaration by the President.* When there is a Presidential major disaster or emergency declaration and FEMA has notified the FmHA or its successor

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agency under Public Law 103-354 National Office, the following actions will be taken:

(1) The National Office will immediately:

(i) Notify the State Director and the Director, Finance Office by telephone and confirm by electronic message. The notification will contain:

(A) The date of the declaration;

(B) The name(s) of the county(ies) determined eligible for Federal disaster assistance;

(C) The type of disaster;

(D) The incidence period for the disaster;

(E) The termination date for accepting applications; and

(F) The disaster declaration number [Examples: Major Disasters, M491; or Presidential Emergency, E061].

(ii) Take the actions required by § 1945.21(a)(1) of this subpart.

(2) The State Director will immediately:

(i) Notify the appropriate County Supervisor(s) to make EM loans available in the declared counties, and confirm this notification by a State supplement containing information listed in paragraphs (a)(1)(i) (A) through (F) of this section.

(ii) Notify the SFAC Vice Chairperson, Emergency Programs, in writing; and

(iii) Prepare the public announcements deemed appropriate to inform the farm community, and coordinate the issuance of such announcements with FEMA's Public Information Officer.

(3) The County Supervisor will immediately upon receiving notification that the county(ies) has been declared a disaster area:

(i) Notify the Chairperson LFAC in writing;

(ii) Make such public announcements as seem appropriate to adequately inform the local farm community;

(iii) Arrange and conduct meetings with local agricultural lenders and agricultural leaders within 10 working days after the disaster declaration date to explain the purpose and the assistance available under the EM loan program; and

(iv) Be available to help staff the FEMA disaster assistance centers, when requested to do so.

(b) *Determination by the Secretary of Agriculture.* When a potential disaster has substantially affected farmers, causing qualifying severe losses and it is requested by a Governor or Indian Tribal Council that there be a determination that a natural disaster has occurred, the Secretary will acknowledge the request in writing and consider whether a determination should be made, provided the Secretary receives such request in writing within three months of the last day of the occurrence of such potential disaster. The Governor or Indian Tribal Council should send a copy of the request to the FmHA or its successor agency under Public Law 103-354 State Director. When the Secretary finds based on the material received pursuant to this subpart that the conditions of § 1945.6(c)(3)(iii) (A) or (B) have been met, it shall be announced that a natural disaster has occurred. Also, if on finding that the conditions of § 1945.6(c)(3)(iii)(C) of this subpart so warrant, the Secretary may determine that a natural disaster has occurred.

(1) Upon receipt of the Governor's or Indian Tribal Council's request through the Secretary's Office, the FmHA or its successor agency under Public Law 103-354 National Office will immediately take the following actions:

(i) Notify the State Director by telephone of the Governor's request.

(ii) Obtain an immediate report from the State Director on whether there have been severe physical property losses within each of the counties requested by the Governor or Indian Tribal Council.

(iii) Obtain a report from the State Director on production losses.

(2) The State Director will immediately:

(i) Notify the SFAC Vice Chairperson, Emergency Programs, that a DAR is needed, unless the Governor has already made such request to the SFAC Vice Chairperson, in accordance with the EOH for the requested county(ies); and

(ii) Advise the National Office on whether qualifying physical property losses have occurred.

(iii) Review each DAR, as soon as it is available, and forward it to the National Office with written comments on the extent of probable qualifying production losses, and other factors which are recommended for consideration by the Secretary in making determinations under § 1945.6(c)(3) of this subpart. The State Director will also submit to the National Office a list of all agricultural commodities produced in the State, giving the average yearly prices for each commodity for the three years immediately preceding the disaster year; the county average yields for each commodity for the five years immediately preceding the disaster year; and any additional supportive information. Yields and prices data will be used to establish the normal year's production and will be obtained from the USDA National Agricultural Statistics Service (NASS) by the State Director. In cases where crops produced and/or prices are not available from NASS, the information will be obtained from other reliable sources.

(iv) Upon receipt of the Administrator's request for a survey in connection with a request by the Secretary for information needed concerning § 1945.6(c)(3)(iii)(C), expeditiously gather and compile the information requested and submit it to the Administrator with a recommendation. The survey will be conducted in a manner jointly agreed upon by the Administrator and the State Director.

(3) The National Office will:

(i) Immediately use the State Director's report and accompanying price and yield information to analyze and verify losses reported in the DAR(s), along with any other information and comments provided by the State Director.

(ii) Promptly forward a written report to the Secretary, along with supporting information, for use by the Secretary in making a decision on the requested natural disaster determination.

(4) The Secretary will review the results of the survey and determine whether a natural disaster has occurred.

(i) When the Secretary determines that a natural disaster has occurred:

(A) The Administrator will be directed to make EM loans available in the county(ies) named by the Secretary, as provided by law.

(B) The Administrator will notify the State Director, by electronic message, of the Secretary's decision. Such notice *will not* be given to the State Director until the Secretary has notified the Governor or Indian Tribal Council, from whom the natural disaster determination request was received.

(C) The National Office will immediately pursue the same course of action as described in paragraph (a)(1) of this section, except the disaster determination number will be coded S and three numbers (Example S141).

(D) The State Director will immediately pursue the same course of action as described in paragraph (a)(2) of this section.

(E) The County Supervisor will immediately pursue the same course of action as described in paragraph (a)(3) of this section.

(ii) When the Secretary determines that the conditions in § 1945.6(c)(3)(iii)(A) or (B) of this subpart have *not* been met, and decides to consider other factors in accordance with § 1945.6(c)(3)(iii)(C) of this subpart, the Secretary will:

(A) Request the Administrator to provide additional information for consideration through an actual survey of farmers and lending institutions in the county(ies) requested to be determined a natural disaster area.

(B) The Administrator will instruct the State Director to conduct the survey focusing on such factors as:

(1) The nature and extent of production losses;

(2) The number of farmers who have sustained qualifying production losses;

(3) The number of farmers in paragraph (b)(4)(ii)(B)(2) of this section that other lenders in the County Office area indicate they will not be in a position to finance;

(4) Whether the losses will cause undue hardship to a certain segment of farmers in the county;

(5) Whether damage to particular crops has resulted in undue hardship;

(6) Whether other Federal and/or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and the demand for EM loans; and

(7) Any other factors considered relevant.

(iii) If the Secretary finds that the conditions of § 1945.6(c)(3)(iii) (A) or (B) of this subpart have *not* been met, and decides that the conditions do not warrant a natural disaster finding under § 1945.6(c)(3)(iii)(C) of this subpart, the Governor or Indian Tribal Council and other concerned officials will be notified of this and the reason(s) for the Secretary's conclusions.

(c) *Notification by the FmHA or its successor agency under Public Law 103-354 Administrator.* When the Administrator determines that an unusual and adverse weather condition or natural phenomenon has substantially affected farmers, causing qualifying severe *physical losses*, the Administrator will make EM physical loss loans available in the county(ies) identified and notify the State Director by electronic message.

(1) The Administrator, upon notifying the State Director that EM physical loss loans are to be made available, will issue the following:

(i) The Administrator's notification number (Example: N181);

(ii) The incidence period for the natural disaster; and

(iii) The termination date for accepting applications.

(2) The State Director upon receiving written notification by electronic message from the Administrator will notify:

(i) Appropriate County Supervisor(s) to commence processing EM loan applications in appropriate county(ies).

(ii) The SFAC Vice Chairperson, Emergency Programs; and

(iii) The news media with appropriate announcements.

(3) The Administrator will notify the Office of the Secretary of Agriculture of any action taken concerning *physical* property losses. The National Office will also provide the same information to the appropriate Governor or Indian Tribal Council, FEMA, ASCS, SBA and

other concerned officials at their request.

(4) Upon notification from the State Director that EM loans are available in a county, the County Supervisor will pursue the course of action described in § 1945.20(a)(3) of this subpart.

(d) *Relationship between Administrator's notification and Secretary's determination.* Both the Administrator and the Secretary can make natural disaster determinations affecting the same county:

(1) When the Administrator has made physical loss loans available pursuant to § 1945.6(c)(3)(ii), and the Secretary later makes production loss loans available pursuant to § 1945.6(c)(3)(iii) on the basis of the same unusual and adverse weather condition or natural phenomenon, such physical and production losses will be considered to be caused by a single natural disaster. Any physical loss loans made pursuant to the Administrator's earlier notification will be included in the maximum amount available to an applicant as prescribed in § 1945.163(e) of subpart D of part 1945 of this chapter.

(2) When a series of unusual and adverse weather conditions or natural phenomena occur in a county within the same crop year, and it is not possible for the Secretary to assess the damages in order to determine whether the conditions in § 1945.6(c)(3)(iii) have been met until the end of such series or the crop year, a determination that a natural disaster has occurred shall be considered for both physical property and production losses to be due to a single natural disaster. Any physical loss loans made pursuant to the Administrator's earlier notification will be included in the maximum amount available to an applicant as prescribed in § 1945.163(e) of subpart D of part 1945 of this chapter.

(e) *Extension of termination dates for continuing disaster conditions.* When a natural disaster continues beyond the date on which an Administrator's notification or Secretary's determination is made, and when there are continuing losses or damages caused by that disaster, the Administrator will extend the incidence period and the termination date for such specified period as the Administrator finds appropriate, but

not in excess of 60 days. The following actions will be taken to obtain an extension:

(1) The County Supervisor will advise the State Director of the conditions for which an extension is requested.

(2) The State Director will make a recommendation to the Administrator on whether an extension should be granted; and

(3) The Administrator will, if the request is granted:

(i) Amend the initial notification/termination (using the same number) by establishing a new incidence period and termination date; and

(ii) Notify the State Director by electronic message.

(f) *Limitations.* When actions are authorized by the Secretary or the Administrator under paragraphs (b) or (c) of this section, such actions will ordinarily be completed within six months after the beginning date of the incidence period of a reported disaster, except when the actions required in paragraph (b)(2) of this section cause a delay beyond the six months period, in which event the actions must be completed within nine months of the beginning date of the incidence period. The Secretary may extend this limitation up to 12 months from the beginning date of the incidence period if there were other exceptional causes for the delay.

§ 1945.21 Reporting and coordination requirements.

After EM loans are made available under § 1945.20 of this subpart, the following actions will be taken immediately:

(a) *By the National Office.* The Administrator or a designee will:

(1) Submit weekly reports to the following, informing them of the past week's disaster actions taken by FmHA or its successor agency under Public Law 103-354. If no actions are taken in any particular week, negative reports will be made:

(i) The Secretary of Agriculture or the Secretary's designee;

(ii) The Director of the FmHA or its successor agency under Public Law 103-354 Finance Office;

(iii) The FEMA;

(iv) The SBA Central Office;

(v) The ASCS National Office;

(vi) The FCIC National Office;

(vii) The OMB;

(viii) The National Oceanic and Atmospheric Administration; and

(ix) The Office of Governmental and Public Affairs.

(2) The weekly reports will contain the following information:

(i) The date of the declaration/determination/notification;

(ii) The name(s) of any county(ies) in which EM loans are available;

(iii) The nature of the damages and losses; and

(iv) The termination data for accepting EM loan applications.

(b) *By the State Director.* (1) Notify the appropriate County Supervisor(s) of the:

(i) Name(s) of any county(ies) in which EM loans are available;

(ii) Date of the declaration/determination/notification;

(iii) Disaster number;

(iv) Type of disaster;

(v) Incidence period; and

(vi) Termination date for accepting applications.

(2) Notify the State ASCS Executive Director of the authority to make EM loans. Promptly have a meeting to review and implement the provisions of the Memorandum of Understanding between ASCS and FmHA or its successor agency under Public Law 103-354 on Disaster Assistance, exhibit A of FmHA Instruction 2000-JJ (available in any FmHA or its successor agency under Public Law 103-354 office). Arrive at a mutual understanding as to how ASCS disaster program benefits are to be handled in conjunction with the processing of FmHA or its successor agency under Public Law 103-354 EM actual loss loans, so that duplication of benefits for the same losses are not received by disaster victims;

(3) Contact the FCIC Field Operations Office Director to review the Memorandum of Understanding between FCIC and FmHA or its successor agency under Public Law 103-354, exhibit A of FmHA Instruction 2000-N (available in any FmHA or its successor agency under Public Law 103-354 office), and arrive at a mutual understanding as to how FCIC indemnity

payments are to be handled in conjunction with the processing of EM actual loss loans so that duplication of benefits for the same losses are not received by disaster victims;

(4) Make appropriate public announcements, including notices in Indian Tribal Council(s) news media. However, if the declaration was by the President, under § 1945.20(a) of this subpart, news releases should be cleared with the FEMA; and

(5) If the FEMA notifies the State Director that an agreement between the State and Federal Government (FEMA) has been made to provide 408 grants in a major disaster area to those suffering damages and losses to housing and personal property, who *are ineligible* for disaster loan assistance through the FmHA or its successor agency under Public Law 103-354 and/or SBA, the following actions will be taken:

(i) The State Director will notify the appropriate County Supervisor(s) of the address and phone number of the nearest FEMA office in the Supervisor's area; and

(ii) At the close of business each week, the County Supervisor(s) will forward to the State Director a list of applicants claiming physical losses who do not qualify for EM loan assistance, with the reason(s) they do not qualify; and

(iii) The State Director will immediately summarize the information received from the County Supervisors and forward a report to FEMA.

(c) *By the County Supervisor.* (1) Notify the County ASCS Executive Director of the declaration/determination/notification and have a meeting to review and implement the provisions of the Memorandum of Understanding between ASCS and FmHA or its successor agency under Public Law 103-354 on Disaster Assistance, exhibit A of FmHA Instruction 2000-JJ (available in any FmHA or its successor agency under Public Law 103-354 office), to arrive at a mutual understanding as to how ASCS disaster program benefits and other information in ASCS's records will be made available and used in processing EM actual loss loans. Also, the County Supervisor will request that information regarding the

availability of EM loans be placed in the ASCS's newsletter;

(2) Notify the County Governing Body, Indian Tribal Council(s), and make appropriate public announcements including notices in Indian Tribal Council(s') news media; and

(3) Explain the assistance available under the EM program to agricultural lenders and leaders in the area including Indian agricultural lenders and leaders.

§§ 1945.22–1945.24 [Reserved]

§ 1945.25 Relationship between FmHA or its successor agency under Public Law 103-354 and FEMA.

(a) *General.* When a major disaster or emergency declaration is made by the President, the FEMA is charged with the responsibility for seeing that disaster assistance is made available to disaster victims. Also, FEMA is responsible for coordinating the actions of other Federal agencies who have programs to provide disaster assistance. A Federal Coordinating Officer (FCO) is appointed for each major disaster or emergency to coordinate Federal assistance in the disaster area.

(b) *Before the declaration.* (1) When a request for a major disaster or emergency declaration is made by the Governor of a State, the FEMA through its Regional Director is responsible for obtaining an assessment of the losses and damages to respond to the request.

(2) If the FEMA makes a request for information from FmHA or its successor agency under Public Law 103-354 on losses and damages caused by an unusual and adverse weather condition or natural phenomenon, the FEMA representative will be advised to contact the SFAC Vice Chairperson. The EOH provides that the SFAC will request the LFAC to prepare the DAR. State Directors and County Supervisors should cooperate with the SFAC Vice Chairpersons and LFAC Chairpersons in preparing the DARs.

(c) *After the declaration.* When a major disaster has been declared by the President and the FEMA establishes a disaster application center(s) in the local disaster area(s):

(1) The SFAC will be responsible for:

(i) Selecting qualified USDA employees to represent USDA at each center,

after consulting with other council members in making the selection. FmHA or its successor agency under Public Law 103-354 State Directors will cooperate with the SFAC in seeing that centers are properly staffed.

(ii) Orienting the selected employees on all current USDA disaster programs. FmHA or its successor agency under Public Law 103-354 State Directors will cooperate in this orientation to ensure that the USDA representatives at the center(s) are familiarized with the FmHA or its successor agency under Public Law 103-354 EM loan program and other FmHA or its successor agency under Public Law 103-354 loan programs that could be of assistance to the disaster victims; and

(iii) Informing the FEMA that USDA representatives are available to help at each of the disaster application centers.

(2) The FmHA or its successor agency under Public Law 103-354 State Director will be responsible for pursuing the following policy in working with the FEMA and the FCO by:

(i) Authorizing receipt of EM loan applications in the counties named by the FEMA. However, no EM loans can be approved until the National Office has given such notification as prescribed in § 1945.20(a)(1) of this subpart;

(ii) Attending or delegating a representative to attend any meeting(s) called by the FCO to discuss Federal assistance under the disaster declaration; and

(iii) Advising the FCO to contact the SFAC Vice Chairperson, if a request is made by the FCO for FmHA or its successor agency under Public Law 103-354 employees to help staff the FEMA's Disaster Application Centers; and

(iv) Advising the FCO that FmHA or its successor agency under Public Law 103-354's "Report of Emergency Loans Made Pertaining to Disasters" will be provided quarterly to FEMA's National Office by the FmHA or its successor agency under Public Law 103-354 National Office.

§ 1945.26 Relationship between FmHA or its successor agency under Public Law 103-354 and SBA.

(a) *General.* Public Law 99-272 made agricultural enterprises ineligible for

SBA physical disaster and economic injury loan programs. However, in disaster areas declared by the President or the SBA Administrator, the SBA will continue to accept physical disaster loan applications for losses to dwellings and/or personal household contents, regardless of whether the dwelling is located on a farm or nonfarm tract. It is the policy of USDA and FmHA or its successor agency under Public Law 103-354 to cooperate with SBA in the use of each agency's respective loan making authorities, to complement the activities of each other; and to the extent possible, improve the delivery of disaster assistance to the agricultural segment of the country and minimize the potential for duplication of benefits for the same losses from the disaster loan programs administered by the two agencies.

(b) *Preventing duplication of disaster program benefits.* Preventing borrowers from receiving duplicate disaster program benefits will be assured by taking the following precautions:

(1) For all counties named by FEMA under a major disaster or Presidential emergency declaration, the FmHA or its successor agency under Public Law 103-354 County Offices will notify the appropriate SBA Disaster Area Office of all EM loan applications received each week, for damage or loss of farm dwellings and/or loss of household contents. Notice will be given by forwarding to SBA a photocopy of the applicant's completed Form FmHA or its successor agency under Public Law 103-354 410-1, "Application for FmHA or its successor agency under Public Law 103-354 Services." Block 22 of the form should indicate the purpose for which the loan was requested.

(2) For each application referred to in paragraph (b)(1) of this section, FmHA or its successor agency under Public Law 103-354 County Offices will send a copy of each final action taken with EM loan applications to the appropriate SBA Disaster Area Office.

(3) A farm applicant may elect to obtain SBA financing for physical damage or loss to the dwelling and household contents, and separate financing from FmHA or its successor agency under Public Law 103-354 to cover damages or losses to the farming operation.

Accordingly, applicants who elect to receive SBA physical disaster loans for dwelling and/or household content losses may also file for FmHA or its successor agency under Public Law 103-354 EM loan assistance in disaster areas declared by the President or the Secretary of Agriculture or FmHA or its successor agency under Public Law 103-354 Administrator. An EM loan will *not* be approved until it is determined the requirements of § 1945.163(d) of subpart D of this part will be met. When an EM loan is approved, the FmHA or its successor agency under Public Law 103-354 County Office will notify the SBA Disaster Area Office, pursuant to paragraph (a)(4)(ii) of § 1945.183 of subpart D of this part.

(c) *How SBA disaster loans are made available.* SBA disaster loans are available in counties:

(1) Named by the FEMA under a major disaster or emergency declaration by the President; for physical loss and/or economic injury disaster loans.

(2) Declared by the SBA Administrator for physical loss and economic injury disaster loans.

(3) Designated by the Secretary of Agriculture for Agri-dependent businesses.

(d) *Notification of SBA disaster areas.* The SBA Central (National) Office will notify the FmHA or its successor agency under Public Law 103-354 National Office when its disaster loan program is made available. The FmHA or its successor agency under Public Law 103-354 National Office will notify State Directors, by memorandum, of the SBA disaster areas; and State Directors will notify the appropriate County Supervisor(s) in writing.

§ 1945.27 Relationship between FCIC and FmHA or its successor agency under Public Law 103-354.

(a) *General.* Exhibit A of FmHA Instruction 2000-N (available in any FmHA or its successor agency under Public Law 103-354 office) is a Memorandum of Understanding between FCIC and FmHA or its successor agency under Public Law 103-354. This Memorandum of Understanding is intended to assist in maintaining and improving the working relationship between the FCIC and the FmHA or its

successor agency under Public Law 103-354 by providing encouragement to regular and FmHA or its successor agency under Public Law 103-354 EM loan borrowers to use Federal All-Risk Crop Insurance, where available; assist FmHA or its successor agency under Public Law 103-354 borrowers to obtain All-Risk Crop Insurance or other agricultural commodity insurance coverage; and exchange information essential to the elimination of duplicating compensatory disaster benefits from the FCIC and FmHA or its successor agency under Public Law 103-354 for the same disaster losses.

(b) *Annual meeting with FCIC.* FmHA or its successor agency under Public Law 103-354 State Directors will meet with FCIC Field Operations Office Directors at least once each year to review the Memorandum of Understanding and rededicate their efforts and those of their respective agency employees to comply with the agreements contained in the Memorandum of Understanding.

(c) *Contact after EM actual loss loans are made available.* After each disaster, when EM loans are made available, State Directors are *required* to promptly contact the FCIC Field Operations Office Director to review the Memorandum of Understanding and agree on how each agency will fulfill its responsibilities in dealing with the disaster situation.

(d) *Notification to County Offices.* State Directors *will* provide instructions for actions to be taken by County Supervisors in maintaining a good relationship with FCIC Insurance Representatives.

§ 1945.28 Relationship between ASCS and FmHA or its successor agency under Public Law 103-354.

Exhibit A of FmHA Instruction 2000-JJ (a copy of which is available in any FmHA or its successor agency under Public Law 103-354 office) is a Memorandum of Understanding between ASCS and FmHA or its successor agency under Public Law 103-354. This Memorandum of Understanding is intended to assist in maintaining and improving the working relationship between the ASCS and the FmHA or its successor agency under Public Law 103-

354 by coordinating certain ASCS disaster programs with the FmHA or its successor agency under Public Law 103-354 EM loan program. It specifically identifies the administrative responsibilities of FmHA or its successor agency under Public Law 103-354 County Supervisors and ASCS County Executive Directors concerning disaster benefits.

§ 1945.29 [Reserved]

§ 1945.30 FmHA or its successor agency under Public Law 103-354 Emergency Loan Support Teams (ELST).

(a) *Use of ELSTs.* ELSTs are to be used when a disaster warrants immediate attention by FmHA or its successor agency under Public Law 103-354 in implementing the EM loan program. Also, ELSTs are used when unusually large numbers of EM loan applications are received and personnel from other areas are required to be temporarily assigned to assist in rendering prompt service to the affected area(s).

(b) *State Office ELST.* Each State Director shall form an ELST to be deployed, when needed, in areas affected by a major disaster, Presidential emergency, or a natural disaster. ELSTs shall assist the State Directors in expediting the making of EM loans to disaster victims.

(1) State Directors shall use the ELSTs formed in their State(s) and all other FmHA or its successor agency under Public Law 103-354 personnel within their State(s), as the need arises, in making EM loans. If additional help is needed beyond that available in the State, including the use of overtime, temporary personnel, and/or private contractors, the State Director shall advise the National Office of these needs and request outside assistance.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing ELSTs from other States to assist in the making of EM loans.

(3) State ELSTs will consist of a team leader and team members, selected by the State Director.

(i) The State ELST can include Farmer Programs Specialists, County and Assistant County Supervisors, Pro-

gram Review Assistants, County Office Assistants, and County Office Clerks.

(ii) So that no one person or County Office unit bears an unfair burden, State team members will be changed from time to time.

(iii) Team members will provide training in EM loan making and EM loan servicing to all County Office employees.

(iv) District Directors are responsible for notifying the State Director of any need to change a team member within their district.

(4) State ELSTs will be trained as follows:

(i) The National Office will hold training meetings or workshops for ELST leaders as needed; and

(ii) State ELST leaders will be responsible for training and keeping the State team and all other State personnel currently informed on all phases of EM loans.

(5) State Directors will issue a State supplement establishing an ELST for the State(s) under their jurisdiction. This supplement will name the team leader and all members. A copy of this supplement will be sent to the National Office, Attention: Director, Emergency Designation Staff.

(c) *National Office ELST leaders.* The National Office has established a cadre of ELST team leaders.

(1) National Office team leaders will be used as follows:

(i) Training of FmHA or its successor agency under Public Law 103-354 field personnel, other USDA personnel, and temporary personnel in the making of EM loans:

(ii) Assisting State Directors in the organization and expediting of assistance to eligible disaster victims; and

(iii) Leading ELSTs in areas with an unusually large volume of EM loan applications.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing one or more National Office team leaders to assist in the training of personnel and organizing of EM loan processing activities.

§ 1945.31 FmHA or its successor agency under Public Law 103-354 Emergency Loan Assessment Teams (ELAT).

The State Director will deploy ELATs on a continuing basis to the designated areas to monitor EM loan processing activities in order to minimize loan errors, especially in loss calculations and eligibility determinations. Such teams will be composed of State Office Farmer Programs staff members, District Directors or Assistant District Directors, Office Management Assistants/Program Review Assistants, and auditors from the Office of Inspector General, if they desire to participate. The team leader will keep the State Director informed by telephone and by submission of weekly written reports, setting forth the problems discovered and the corrective actions taken or to be taken. The State Director will keep all County and District Offices in the designated area of the State informed of the common problems found by the team and require appropriate corrective action to be taken by the County Office. Such actions will be monitored by the District Director and reported to the State Director when corrective measures have been completed. State Directors will monitor the handling of this quality control measure and will forward a copy of the ELAT team leader's report to the Administrator, Attention: Emergency Designation Staff.

§§ 1945.32-1945.34 [Reserved]

§ 1945.35 Special EM loan training.

(a) *General.* When it is evident that a large number of farmers were affected by a widespread disaster in a State, the National Office will send a qualified representative(s) from the Emergency Designation Staff to the State to assist the State Director in conducting a training meeting(s) with State, District and County employees, provided there has not been a recent training meeting in that State.

(b) *Purpose.* A good training program is a must in disaster areas. This program should adequately instruct State and County Office personnel so that when the training is completed they will be well qualified to process EM

loans without undue delay. The training meeting will last two days (16 hours) and include a workshop and a test.

(c) *Objective.* The basic objective of this training program is to keep State and County personnel properly trained in the current methods of processing EM loan applications and EM loan making. This will result in more expeditious service to disaster victims during critical times and minimize erroneous interpretations of regulations by FmHA or its successor agency under Public Law 103-354 employees in administering the EM loan program.

(d) *Comprehensive EM loan training package.* A comprehensive EM loan training package has been developed for use by National Office and Staff Office personnel in training all EM loan writers (both regular and temporary employees). This package, including an application kit, will be used for the EM loan training meetings, and any subsequent EM loan training meetings conducted by State or District personnel.

(e) *Funding.* Travel for the two-day session required in paragraph (b) of this section may be funded from a special purpose account with advance approval from the Budget Division. The following information must be provided to the Budget Division when a request is made for these additional travel funds:

- (1) Number of sessions.
- (2) Categories, by number, of personnel attending each session.
- (3) Estimated cost per session.

§§ 1945.36-1945.44 [Reserved]

§ 1945.45 Public information function.

A good public information program is a must in disaster areas. This program should inform farmers and the general public when and where EM loans are available. Also, the information will state the EM loan objectives, eligibility requirements, and type of assistance available. Public information functions will be performed according to exhibit A of FmHA instruction 2015-A (available in any FmHA or its successor agency under Public Law 103-354 office).

§§ 1945.46–1945.50 [Reserved]**Subparts B–C [Reserved]****Subpart D—Emergency Loan Policies, Procedures, and Authorizations**

SOURCE: 53 FR 30392, Aug. 11, 1988, unless otherwise noted.

§ 1945.151 Introduction.

(a) *Policy.* This subpart prescribes the policies, procedures, and authorizations of the Farm Service Agency (FSA) or its successor agency under Public Law 103–354 for making direct emergency (EM) loans to farmers, ranchers, and aquaculture operators (hereinafter referred to as farmers), as provided by law. Agency or its successor agency under Public Law 103–354's policy is to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract). These regulations apply to applicants/borrowers and Agency or its successor agency under Public Law 103–354 personnel involved in making EM loans. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency or its successor agency under Public Law 103–354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an Agency or its successor agency under Public Law 103–354 employee.

(b) *Program administration.* The County Supervisor is the local contact person for applicant processing, loan making, and loan servicing activities.

[53 FR 30392, Aug. 11, 1988, as amended at 58 FR 228, Jan. 5, 1993; 58 FR 48282, Sept. 15, 1993; 61 FR 35926, July 9, 1996]

§ 1945.152 Program objectives.

The objective of EM loans is to provide financial assistance to cover actual losses sustained by eligible farm-

ers, so that they can return to normal farming operations after sustaining substantial losses as a result of a declared/designated disaster. EM loans are made to assist eligible disaster farm victims rehabilitate and resume their normal operations. This objective will be accomplished through the extension of credit and such supervisory assistance as is determined necessary to achieve the objectives of the loan and protect the Government's interest. Supervisory assistance will be given in accordance with the provisions of subpart B of part 1924 of this chapter. The borrower has the responsibility of achieving the objectives of the loan. The borrower accomplishes this by repaying the loan according to the planned repayment schedule, maintaining Agency or its successor agency under Public Law 103–354 security, using loan funds for planned purposes only and following a plan of operation agreed upon with Agency or its successor agency under Public Law 103–354.

[53 FR 30392, Aug. 11, 1988, as amended at 61 FR 35926, July 9, 1996]

§ 1945.153 Loans for citrus grove rehabilitation or reestablishment.

Exhibit D of this subpart, which deals with loans made to operators of citrus groves, modifies some of the provisions contained in this subpart.

§ 1945.154 Definitions and abbreviations.**(a) Definitions—**

Additional security. Any security beyond that which is required to adequately secure the loan.

Agency. The Farm Service Agency, its county and State committees and their personnel, and any successor agency.

Applicant. The person or entity conducting the farming operation at the time of the disaster and making a request for EM loan assistance from FmHA or its successor agency under Public Law 103–354.

Approval official. An FmHA or its successor agency under Public Law 103–354 official who has been delegated loan approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA or its successor

agency under Public Law 103-354 office (see FmHA Instruction 1901-A, exhibit C).

Aquaculture. The husbandry of aquatic organisms in a controlled or selected environment. Aquatic organisms are fish (the term *fish* includes any aquatic gilled animal commonly known as "fish," as well as mollusks, crustaceans, or other invertebrates produced under controlled conditions—that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products—in ponds, lakes, streams, or similar holding areas), amphibians, reptiles, or aquatic plants. An aquaculture operation is considered to be a farm only if it is conducted on grounds which the applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a written permit or lease issued to the applicant and the permit or lease must specifically identify the waters to be used solely by the applicant.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(1) Meets the loan eligibility requirements for EM loan assistance in accordance with §1945.162 of this subpart.

(2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to *all* members of an entity.

(3) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, oper-

ation of the farm or ranch would be seriously impaired.

(4) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA or its successor agency under Public Law 103-354 regulations.

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(7) In the case of an entity:

(i) All the members are related by blood or marriage.

(ii) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA or its successor agency under Public Law 103-354 under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA or its successor agency under Public Law 103-354 debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or

liquidated, or who have been discharged of all FmHA or its successor agency under Public Law 103-354 debt.

Calendar year. The 12-month period beginning January 1 and ending December 31 of any given year.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm(s).

Corporation. For the purpose of this subpart, a private domestic corporation recognized as a corporation and authorized to carry on farming, ranching, or aquaculture operations under the laws of the State(s) in which the entity will operate a farm(s).

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

Direct loan. A loan made directly by FmHA or its successor agency under Public Law 103-354 as lender from the Agricultural Credit Insurance Fund, and serviced by FmHA or its successor agency under Public Law 103-354 personnel.

Eligible area. A county or similar political subdivision in which EM loans are made available.

Established farmer. A tenant-operator or owner-operator of a family farm who was actively participating in the operation and management of a farming operation at the time of the disaster, spends a substantial portion of time in carrying out the farming operation, and had planted a crop or had purchased livestock which were on the farm at the time of the disaster. If the applicant is a cooperative, a corporation, a partnership or a joint operation, it must be primarily engaged in farming, i.e., the applicant entity must derive over fifty percent (50%) of its gross income from all sources from its farming operation. The gross farm income figures will be taken from the proposed annual plan or farm budget that will

cover the next projected 12-month period (or crop year).

Family farm. A farm or ranch as defined in § 1941.4 of subpart A of part 1941 of this chapter.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which are used or will be used in production of crops or livestock and meet the requirements of the definition for *family farm* of this section. This includes aquaculture operations which meet the requirements set forth in the definition for *Aquaculture* of this section and includes nonfarm operations which meet the requirements set forth in the definition for *Nonfarm enterprise* of this section. It also includes a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Farm and home plan. For the purpose of this regulation, any reference to farm and home plan(s) means any farm planning and/or recordkeeping system(s) acceptable to the loan approval official. This includes but is not limited to: Form FmHA or its successor agency under Public Law 103-354 431-2, "Farm and Home Plan;" farm budgets; State University Computerized Farm Planning Systems; etc.

Farming enterprise. The business of producing and marketing crops, livestock, livestock products, and aquatic organisms through the utilization and management of land, water, labor, capital, and basic raw materials.

(1) *Single enterprise.* Any single crop or livestock enterprise which constitutes a basic part of an applicant's total farming operation. Some crops such as corn may be produced as a cash or feed crop. In such cases, the actual acres produced for each purpose for the best 4 of the past 5 years will be used in determining losses for each single enterprise. The following are examples of single enterprises:

(i) Individual cash crops, i.e., wheat is an individual crop, corn is an individual crop, and soybeans is an individual crop.

(ii) Individual vegetable crops, i.e., carrots is an individual crop, tomatoes is an individual crop, and radishes is an individual crop.

(iii) Individual fruit crops, i.e., apples is an individual crop, oranges is an individual crop, and grapefruit is an individual crop.

(iv) Individual nut crops, i.e., walnuts is an individual crop, almonds is an individual crop, and pecans is an individual crop.

(v) Individual feed crops, i.e., alfalfa is an individual feed crop, and corn is an individual feed crop when fed to an applicant's own livestock. A livestock enterprise must be a basic part of the farming operation in order for the feed crops to be considered as a basic enterprise in determining eligibility based on production losses to feed crops.

(vi) Beef operations;

(vii) Dairy operations;

(viii) Hog operations;

(ix) Poultry operations;

(x) Any aquaculture operation; and

(xi) Any other operations (i.e., trees grown for timber).

(2) *Basic part of a farming operation.* Any single enterprise which normally generates sufficient income to be considered essential to the success of the total family farming operation.

Feasible Plan. A feasible plan is one which meets the requirements of subpart B of part 1924 of this chapter.

Fixture. Generally, an item attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself.

Hazard insurance. Includes coverage against losses due to fire, windstorm, lightning, hail, explosion, business interruption, riot, civil commotion, aircraft, land vehicles, marine vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workmen's compensation, or any similar insurance that is available and needed to protect the security, or that which is required by law.

Household contents. The essential household items necessary to maintain viable living quarters such as: stove, refrigerator, furnace, couch, chairs, tables, beds, lamps, etc. Excludes all luxury items including jewelry, furs, antiques, paintings, etc.

Incidence period. The specific date(s) during which a disaster occurred.

Irregular payment schedule. To schedule the payment of interest in part and/or principal in whole or in part.

Joint operation. A farming entity in which two or more farmers work together sharing equally or unequally land, labor, equipment, expenses and/or income. The joint ownership of land and/or equipment or the exchange of labor and equipment in separate farming operations does not constitute a joint operation. They are two separate individual operations.

Majority or controlling interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership, or joint farming operation.

Market value. The amount which a willing buyer would pay a willing, but not forced, seller in a completely voluntary sale.

Nonfarm enterprise. Any nonfarm business enterprise including recreation which is closely associated with the farming operation and located on or adjacent to the farm and provides income to supplement farm income. This may include, but is not limited to, such enterprises as custom farm work on other farms, raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Normal year's production. The normal year's production is the average per acre yield or production per animal unit of the 4 better years out of the 5 years immediately preceding the disaster year.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must:

(1) Be recognized as a partnership by the laws of the State(s) in which the entity will operate a family farm;

(2) Be authorized to own real and/or personal property;

(3) Be able to incur debts in its own name.

Physical loss. Damages to or destruction of physical property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock; livestock products; harvested crops; supplies; and

growing crops and pasture which will be replanted/reestablished. Loss of income from custom work, due to a short crop caused by the disaster, cannot be counted as a disaster loss because custom farm work is a nonfarm business and not an agricultural enterprise.

Primary security. Any real estate and/or chattel security which is required to adequately secure the loan. This is not to be confused with "basic security," as defined in §1962.4 of subpart A or part 1962 of this chapter.

Production loss. The reduction in normal production, directly attributable to the natural disaster, of yield per acre and/or quality of crops produced, of quantity and/or quality of livestock products produced per animal unit, and of weight gain and/or natural increase in numbers of livestock units. Loss of income from custom work, due to a short crop caused by the disaster, cannot be counted as a disaster loss because custom farm work is a nonfarm business and not an agricultural enterprise.

Qualifying disaster. A major disaster, Presidential Emergency, or natural Disaster as defined in subpart A of this part.

Qualifying physical loss. A loss caused by damage to or destruction of physical property that is essential to the successful operation of the farm; and if it is not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis.

Qualifying production loss. The production loss an applicant sustained from the disaster that is equivalent to at least a 30 percent loss of normal per acre or per animal production in any single enterprise, which is a basic part of the total farming operation. Losses of livestock increases e.g., calves, pigs, etc., are considered production losses, except when live animals are destroyed. When an animal is killed, lost or sold because of injury or reduced production potential caused by the disaster, it is considered a physical loss. Reductions in the production of feeder livestock and livestock products, or reductions in weight gain of such animals due to homegrown feed crop and/or pasture losses, will not be considered production losses when replacement feed is available to purchase, re-

gardless of the cost of that feed. When the disaster has severely disrupted the usual feeding schedule of a livestock enterprise because of extended utility failure or inaccessibility to the livestock, losses in production of milk, eggs, weight losses, etc., may be considered as production losses. Such production losses will be calculated based on the reduction from the normal year's (full year's) production which was caused during the disruption period and the period needed to bring production back up to the normal level.

Related by blood or marriage. As used in this subpart, individuals who are related to one another as husband, wife, parent, child, brother or sister.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term *security*.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Subsequent loans. Any EM loans processed by the Finance Office after it processed the first EM loan to a borrower. The disaster designation number is not considered in determining whether an EM loan is a subsequent loan.

Termination date. The date specified in a disaster declaration/determination/notification which establishes the final date after which EM loan applications can no longer be accepted.

For both physical and production losses, the termination date is 8 months from the date of the disaster declaration/determination/notification.

(b) *Abbreviations.* The following abbreviations are used in this subpart:

ASCS—Agricultural Stabilization and Conservation Service.

ECP—Emergency Conservation Program.

EFAP—Emergency Feed Assistance Program.

EM—Emergency Loans.

FCIC—Federal Crop Insurance Corporation.

FEMA—Federal Emergency Management Agency.

FIA—Federal Insurance Administration.

FmHA—Farmers Home Administration or its successor agency under Public Law 103-354.

FMI—Forms Manual Insert.

INS—Immigration and Naturalization Service.

OGC—Office of the General Counsel.

SBA—Small Business Administration.

UCC—Uniform Commercial Code.

USDA—United States Department of Agriculture.

[53 FR 30392, Aug. 11, 1988, as amended at 55 FR 21530, May 25, 1990; 56 FR 24682, May 31, 1991; 58 FR 26681, May 5, 1993; 58 FR 48289, Sept. 15, 1993; 61 FR 35926, July 9, 1996; 62 FR 9356, Mar. 3, 1997]

§ 1945.155 Relationship between FmHA or its successor agency under Public Law 103-354 and other federal agencies.

(a) *ASCS and FmHA or its successor agency under Public Law 103-354.* A Memorandum of Understanding between the ASCS and FmHA or its successor agency under Public Law 103-354 on disaster assistance pertaining to the exchange of information essential to the elimination of duplication of compensatory disaster benefits from the two participating agencies for the same disaster losses is exhibit A of FmHA Instruction 2000-JJ (available in any FmHA or its successor agency under Public Law 103-354 Office).

(b) *FCIC and FmHA or its successor agency under Public Law 103-354.* A Memorandum of Understanding between the FCIC and FmHA or its successor agency under Public Law 103-354 pertaining to crop insurance and exchange of information essential to the elimination of duplication of compensatory disaster benefits from the two participating Agencies for the same disaster losses is exhibit A of FmHA Instruction 2000-N (available in any FmHA or its successor agency under Public Law 103-354 office).

[55 FR 21530, May 25, 1990]

§ 1945.156 The test for credit and certification requirements for availability of credit elsewhere.

(a) *Applicants who certify that other credit is available.* Applicants applying for EM loan assistance who certify they are *able* to obtain sufficient and suitable credit elsewhere to meet their actual farming and family living needs are not eligible for such assistance.

(b) *Applicants who certify that other credit is NOT available.* Applicants who

certify they are *not able* to obtain sufficient credit elsewhere to meet their actual farming and family living needs must meet the requirements set out in this paragraph (b).

(1) *Test for credit for individuals and entities.* Applicants must be *unable* to obtain sufficient and suitable credit elsewhere to finance their actual needs at reasonable rates and terms, taken into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. If the applicant has been getting credit away from the local community where the farming operation is located, such source(s) of credit must also be contacted and considered. The applicant's equity in *all assets*, including, but not limited to, real estate, chattels, stocks, bonds, and Certificates of Deposit will be considered in determining the applicant's ability to obtain such credit from other sources. Also, the applicant must offer to pledge *all assets* as security when requesting credit from other lenders. Cooperatives, corporations, partnerships and joint farming operations and the members, stockholders, partners and joint operators, both individually and collectively, must be unable to provide the required financing from their own resources or with credit obtained from pledging those resources to other lenders. Form FmHA or its successor agency under Public Law 103-354 1940-38, "Request for Lender's Verification of Loan Application," must be completed (with particular attention that Item 2A is completed) and filed in the applicant's County Office case folder; and any additional facts concerning the findings, *in all cases*, must be documented and recorded in the running case record.

(2) *Test for credit certification requirements.* Applicants will certify in writing on the application form, and the County Supervisor *shall* make the determination whether or not adequate and suitable credit is available elsewhere to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans

for similar purposes and periods of time. The County Supervisor will consider all such information obtained from other lenders in making the determination, but is required to make an independent decision concerning the applicant's ability to obtain the needed credit elsewhere. Should the County Supervisor determine that the applicant *can* obtain the necessary credit elsewhere to meet actual needs, the applicant will be notified, in writing, that the applicant is *not* eligible for an EM loan(s).

(i) For applicants whose total EM loan(s) request is for \$100,000 or less, the following actions will be taken:

(A) Applicants will be required to apply for the credit needed from their normal lender(s) and, if their normal lender(s) is located outside the local community, from at least one agricultural lender in the local community, to determine whether such lender(s) will provide the credit. Form(s) FmHA 1940-38 must be completed by all lending sources contacted, unless an exception is made under the provisions of paragraph (b)(2)(i)(C) of this section. Only when the applicant is not able to obtain a loan, from one or more of the lending sources contacted, will the applicant be considered for an EM loan. If the County Supervisor believes it necessary, the action required in paragraph (b)(2)(ii) of this section will be taken.

(B) When the County Supervisor receives letters or other written evidence, including Form FmHA or its successor agency under Public Law 103-354 1940-38, from a lender(s) indicating that the applicant is unable to obtain satisfactory credit from that source(s), such correspondence will be included in the loan docket.

(C) If it appears from a review of the application that it would be unduly burdensome for the applicant to obtain written declinations of credit from other lenders, the County Supervisor may make an exception to this requirement, provided the County Supervisor is familiar enough with other lenders' farm loan programs to determine that no possibility exists for the applicant to obtain the credit needed from those lenders. When this conclusion is reached, the basis for it will be re-

corded in the running case record, and further checks will not be necessary. However, when this exception is used, the applicant's normal lender(s) *must be contacted in all cases* and the results of that contact(s) must be well documented in the running case record.

(ii) For applicants whose total EM loan(s) request is for more than \$100,000, the following actions will be taken:

(A) Applicants will be required to apply at not fewer than three conventional lending sources, including the Production Credit Association or Federal Land Bank, as appropriate, in the local community. In addition, when an applicant has a net worth of \$1 million or more and produces evidence that the necessary credit cannot be obtained in the local community, the applicant will be required to contact at least two other lending sources outside the local area. One or more of those lenders contacted must be the applicant's normal lender(s).

(B) Form FmHA or its successor agency under Public Law 103-354 1940-38 must be completed by all lending sources contacted, returned to the County Office and handled in accordance with paragraph (b)(2)(i)(B) of this section.

(C) When the County Supervisor receives Form FmHA or its successor agency under Public Law 103-354 1940-38 indicating that the applicant is unable to obtain satisfactory credit, the forms will be placed in the loan docket. However, such evidence will not preclude the County Supervisor from contacting other farm lenders in the area and making an independent determination of the applicant's ability to obtain credit elsewhere.

53 FR 30392, Aug. 11, 1988, as amended at 57 FR 18679, Apr. 30, 1992; 62 FR 9356, Mar. 3, 1997]

§§ 1945.157-1945.160 [Reserved]

§ 1945.161 Receiving and processing applications.

(a) *Applications.* Applications will be received and processed as provided in subpart A of part 1910 of this chapter, with consideration given to the requirements in exhibit M of subpart G of part 1940 of this chapter.

(1) Applications for initial EM loans for each disaster will be received only in areas where EM loans are made available in accordance with subpart A of part 1945 of this chapter, and must be postmarked or received in the County Office before the specified 8-month termination date has passed.

(2) An applicant conducting a family farming operation in different counties or locations will be considered for only one application, and will file that application in the county in which the farm headquarters is located, unless determined otherwise by the State Director. When the operation is located in more than one State, the State Directors involved will consult and determine which State will process the application and service the loan(s).

(3) Applications may be received and processed from FmHA or its successor agency under Public Law 103-354 EM loan borrowers or SBA disaster housing loan borrowers for that portion of the maximum EM loan originally authorized, but not requested initially from FmHA or its successor agency under Public Law 103-354 or SBA, provided the application is *received within 8 months of the disaster declaration/determination/notification date*.

(4) Applicants who are determined to be *ineligible* for an EM loan may be considered for other types of FmHA or its successor agency under Public Law 103-354 farm loans, when appropriate.

(b) *Statement of losses.* Applicant's statements of loss or damage will be obtained in support of their applications by having them complete Form FmHA or its successor agency under Public Law 103-354 1945-22, "Certification of Disaster Losses."

(c) *ASCS verification of farm acreages, production and benefits.* From information obtained on Form FmHA or its successor agency under Public Law 103-354 1945-22, the County Supervisor will send a separate Form FmHA or its successor agency under Public Law 103-354 1945-29, "ASCS Verification of Farm Acreages, Production and Benefits," to the appropriate ASCS County Office for verification of ASCS registered farm(s) that the applicant has certified constituted part of the disaster year's operation. ASCS records of acres of crops planted/grown in the disaster year, ac-

tual (proven) yields in the disaster year, ASCS established yields for the disaster year, ASCS emergency payments and the other information requested on that form must be obtained. The use of Form FmHA or its successor agency under Public Law 103-354 1945-29 is optional for EM loans made for physical losses. It is required for EM loans made for production losses on crops covered by ASCS programs.

(d) *Evidence of operation.* If the applicant is a cooperative, corporation, partnership, or joint operation, it will provide evidence that it was operating as a cooperative, corporation, joint operation or partnership at the time the disaster loss occurred, or has changed its form in accordance with § 1945.162(1) of this subpart, after the loss occurred.

[53 FR 30392, Aug. 11, 1988, as amended at 58 FR 48290, Sept. 15, 1993]

§ 1945.162 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR part 1308, which is exhibit C to subpart A of part 1941 of this chapter and is available in any FmHA or its successor agency under Public Law 103-354 office, for the definition of *controlled substance*) prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and additionally will be ineligible for the four succeeding crop years. Applicants will attest on Form FmHA or its successor agency under Public Law 103-354 410-1, "Application for FmHA or its successor agency under Public Law 103-354 Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) *Debt forgiveness.* EM applicants are ineligible if they have caused the

Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Consolidated Farm and Rural Development Act (CONACT) by debt-write down, write-off, compromise provisions of section 331 of the CONACT, adjustment, reduction, charge-off or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances. Further, the EM applicant must not be delinquent on any direct or guaranteed loan made under the provisions of the CONACT.

(b) *Test for credit.* Applicants must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(c) *Citizenship.* (1) An individual applicant must be a citizen of the United States (see § 1945.154(a) of this subpart for the definition of *United States*) or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District Office. (See exhibit B of subpart A of part 1944 of this chapter.) The completed form will be mailed to INS. The payment of a service fee by FmHA or its successor agency under Public Law 103-354 to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(2) More than a 50 percent interest in the cooperative, corporation, partnership or joint operation must be owned by United States citizens (see

§ 1945.154(a) of this subpart for the definition of *United States*) or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act.

(d) *Established farmer.* An applicant must be an established farmer (as defined in § 1945.154(a) of this subpart). An applicant who conducts the farming operation as an individual must manage the farming operation. At least one stockholder, member, partner or joint operator of an entity applicant must manage the farming operation. One who does not devote full time to the farming operation may be considered the manager provided that person visits the farm at sufficiently frequent intervals to exercise control over the farming operation, makes decisions and gives directions on how the operation(s) should be run, and sees that the operation is being carried on properly. Any applicant that employs an outside full-time hired manager or management service does not qualify as an established farmer, regardless of the number of visits made by the individual applicant or the members, stockholders, partners or joint operators. The following are not considered to be established farmers for EM loan purposes:

(1) An estate or trust; a corporation with over 50 percent of the ownership held by an estate, trust, another corporation, a partnership or a joint operation; a partnership or joint operation with over 50 percent of the ownership held by an estate, trust, corporation, another partnership or another joint operation.

(2) Integrated livestock, poultry, and fish processors who operate primarily and directly as commercial businesses through contracts or business arrangements with farmers. However, a grower under contract with an integrator or processor is considered an established farmer even though the applicant operates through a contract arrangement with an integrated processor, provided the operation is not managed by an outside full-time hired manager or management service. Farmers operating through contract may be considered for EM loans for physical losses

and production losses. However, eligibility for and the amount of their production losses will be determined from the applicant's share of the agricultural production as set forth the contract.

(e) *Operate in a disaster area.* An applicant for an EM loan must have sustained qualifying losses in an area in which the availability of EM loans for actual losses has been determined in accordance with subpart A of part 1945 of this chapter; and must have filed an application before the expiration date. When an applicant's farming operation is located both in a designated county(ies) and a non-designated county(ies) refer to § 1945.163(a)(2)(xx) of this subpart.

(f) *Losses.* An applicant must have suffered qualifying production and/or physical losses to be eligible for an EM loan. Production losses must be to property in which the applicant has an ownership interest or interest in which a security interest can be obtained. Physical losses must be to property in which the applicant has an ownership interest. See § 1945.163 of this subpart for the methods of determining qualifying losses.

(g) *Legal capacity.* An applicant must possess the legal capacity to contract for the loan.

(h) *Training and experience.* An applicant must have sufficient applicable training or farming experience in managing and operating a farm or ranch (1 year's production and marketing cycle within the last 5 years immediately preceding the application) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation and have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation.

(i) *Honestly endeavor.* The applicant will honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan. When the applicant is an

entity, this requirement also must be met by the individual members, stockholders, partners or joint operators.

(j) *Family farm.* The applicant's farm must be a family farm as defined in § 1945.4 of subpart A of part 1941 of this chapter. If the applicant was conducting larger than a family farm at the time of the disaster but will be conducting a family farm at the time an EM loan is closed, the applicant meets this eligibility requirement.

(k) *Intent to continue farming.* An applicant must show an intent to continue the operation after the disaster. Those applicants who were required to stop temporarily because of the disaster loss or damage to their operations but intend to continue farming with EM loan assistance meet this requirement.

(l) *EM loan(s) to cooperatives, corporations, joint operations or partnerships.* When an EM loan is made to a cooperative, corporation, partnership or joint operation, only one initial EM loan can be made to the entity constituting the farming operation to cover the losses per disaster. However, an individual member, stockholder, partner, or joint operator may qualify for a separate EM loan to cover losses to a *separate farming operation* which the applicant conducts as an individual on a different farm tract.

(1) If the members, stockholders, partners or joint operators holding a majority interest *are related* by blood or marriage, at least one member, stockholder, partner or joint operator must operate the family farm.

(2) If the members, stockholders, partners or joint operators holding a majority interest *are not related* by blood or marriage, the majority interest holders must operate the family farm.

(3) If an entity applicant has an operator interest in any other farming operation, that farming operation must be no larger than a family farm.

(m) *Change in the form of an applicant.* A change in the form of an applicant between the time of a qualifying loss and the time an EM loan is closed does *not* make the applicant ineligible for EM loan assistance. (Examples of

changes in form are as follows: An entity may split into its individual members or into more than one entity; one or more individuals may leave an entity; an individual may incorporate; a partnership may become a joint operation, a corporation, a cooperative, or another partnership; a corporation may become a partnership, a joint operation, a cooperative, or another corporation; a cooperative may become a joint operation, a partnership, a corporation, or another cooperative; a joint operation may become a partnership, a corporation, a cooperative or another joint operation.) Such an applicant is eligible for EM loan assistance subject to *all* of the following limitations and qualifications:

(1) The applicant must meet all FmHA or its successor agency under Public Law 103-354 eligibility requirements at the time of loan closing.

(2) The applicant must *not* conduct an operation larger than the operation that was being conducted at the time of the disaster.

(3) In the case of an entity applicant, all of the individuals who have an interest in the entity must have had an ownership interest (or an interest in which a security interest could be obtained) in the farming operation at the time of the disaster and/or must be heirs of those who had an ownership interest (or an interest in which a security interest could be obtained) in the farming operation at the time of the disaster. Heirs must have been participating in the operation at the time the disaster occurred and must be engaged in the farming operation at the time of loan approval.

(4) In the case of an individual applicant, that person must have had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster and/or must be an heir of those who had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster. An heir has to have been participating in the operation at the time the disaster occurred and has to be engaged in the farming operation at the time of loan approval.

(5) To determine the amount of an actual loss loan an applicant may receive, first calculate the actual loss suffered by the operation(s) as it existed at the time of the disaster, in accordance with § 1945.163 of this subpart. Then look at the individual applicant *or* the individual members, stockholders, partners or joint operators of an entity applicant and determine each person's percentage of ownership interest (or interest in which a security interest could be obtained) in the operation as it existed at the time of the disaster. For an entity applicant, add the percentages of all owners who had an interest in the entity that suffered the disaster losses. Multiply the actual loss suffered by the operation as it existed at the time of the disaster by this percentage figure; the result is the amount of actual loss loan the applicant may receive. For example, if one partner withdraws from a four-partner partnership (each person owning a 25% interest), the remaining three partners are eligible for 75 percent of the actual loss suffered by the operation as it existed at the time of the disaster.

(n) *Borrower training.* The applicant must agree to meet the training requirements of § 1924.74 of subpart B of part 1924 of this chapter unless a waiver is granted in accordance with that section. In the case of a cooperative, corporation, partnership, or joint operation, any individual member, stockholder, partner, or joint operator holding a majority interest in the operation or who is operating the farm must agree to complete the training or qualify for the waiver on behalf of the entity. However, if one entity member is solely responsible for financial or production management, then only that entity member will be required to complete the training in that area for the entity or qualify for a partial waiver. If the financial and production functions of the farming operation are shared, the knowledge and skills of the individual(s) with the responsibility of production and/or financial management of the operation will be considered in the aggregate for granting a waiver or requiring that training be completed. If a waiver is not granted, these individuals will be required to complete the training in accordance

with their responsibilities. If the applicant has previously been required to obtain training, the applicant must be enrolled in and attending, or have satisfactorily completed, the training required.

[53 FR 30392, Aug. 11, 1988, as amended at 55 FR 21530, May 25, 1990; 56 FR 3972, Feb. 1, 1991; 58 FR 69199, Dec. 30, 1993; 62 FR 9356, Mar. 3, 1997]

§ 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.

Disaster losses will be reported by applicants on Form FmHA 1945-22, "Certification of Disaster Losses," which states the physical and production losses suffered as a result of the declared/designated disaster. The applicant will report, on Form FmHA 1945-22, total acres and actual yields for *all* crops planted and/or grown in the disaster year, and the number of *all* animal units and production per animal unit being maintained at the time of the disaster. This information will come from the applicant's own records or from ASCS records of acres grown and proven actual yields in the disaster year. Applicants will also report their previous 5-year production levels as set forth in paragraph (a) of this section. This form will be completed and submitted to the County Office with the application, as soon as the losses and/or damages can be accurately assessed. The information provided by applicants on Form FmHA 1945-22 will be the primary basis for FmHA or its successor agency under Public Law 103-354's calculation of qualifying losses, eligibility for EM loan(s) based on production losses, and an applicant's maximum amount of EM loan eligibility. Therefore, applicants are required to certify, subject to penalties of law, that the accuracy and completeness of the information provided on Form FmHA 1945-22 can be supported by written records. Applicants will be asked to identify on that form any single farming enterprise they consider basic to the success of their total farming operation, and in which they have suffered a disaster loss. When an applicant's certified production loss claims seem unreasonable, they will be verified and the findings documented. Physical loss claims will

be verified by requiring the applicant to furnish evidence of ownership and proof of the property loss or damage. Proof of ownership could be by deeds, mortgages, financial statements, insurance policies, and the like. Proof of the loss or damage could be by the applicant's own pictures, written certification by other persons or, when practical, by visual inspections by the Agency or its successor agency under Public Law 103-354 employees.

(a) *Production losses.* (1) The normal year's production will be established by eliminating the poorest year of the 5-year production history immediately preceding the disaster year and averaging the remaining 4 years' production. The applicant must select the year to be eliminated. The year selected to be eliminated must be the same year for all farm enterprises (i.e., all crops, livestock, and livestock products), which constituted a part of the applicant's farming operation during that year. Applicants will identify the production for each commodity that was produced on all farms operated by the applicant in the disaster year. Applicants must use the production record sources for each crop in the order of priority as follows:

(i) *The applicant's actual reliable farm records.* If actual yields are not available for all of the 5 crop years, the applicant will use a combination of actual records and other data as specified in paragraphs (a)(1) (ii) and (iii) of this section.

(ii) *FSA Farm Programs (formerly ASCS) "actual yields."* When this production record source is used, the applicant must obtain the information and submit it with the application. The disaster year actual yield will be used as the yield for those years for which the applicant has no production records to determine the normal year's yields.

(iii) *The county or State average yields.* These average yields are located in the State supplement. However, these production figures can be substituted only when an applicant has insufficient records for certain commodities and years.

(iv) *State Director determination.* When an applicant's production loss is on new land being developed, or to young

perennial crops such as fruits and nuts, which have not reached their mature production potential, the Agency will establish the normal yields to be used.

(2) FmHA or its successor agency under Public Law 103-354 loan official(s) will complete Form FmHA 1945-26, "Calculation of Actual Losses."

(i) In calculating production losses, the same established unit prices will be used for the disaster year and the normal year in computing the dollar value of each enterprise. Unit prices will be established in accordance with paragraph (a)(2)(iv) of this section. In the production loss calculation, those crop production yields and production per animal unit records authorized in paragraphs (a)(1)(i), (ii) and (iii) of this section will be used.

(ii) [Reserved]

(iii) When the applicant's disaster loss is due to a reduction in *quality* with or without a quantity loss, rather than a reduction in *quantity* only, the applicant will be given credit for quality loss by adjusting the actual production yield downward. This will be accomplished by converting the dollar value of the quality loss to a yield reduction equal in value to the quality loss. When a quality adjustment is necessary, the basis used in making the adjustment will be the applicant's *accurate* records of production and sales receipts showing the actual price received and the grade of the commodity for the five years immediately preceding the disaster year. The normal year's quality will be established by eliminating the poorest of the five-year record. The applicant must select the year to be eliminated. The burden of providing this information rests with the applicant.

Example I: A farmer has accurate records indicating that the farmer's normal year's production of corn is 100 bushels per acre of No. 2 corn. Due to flooding after the ears were set and mature, the corn was coated with a filmy residue. This resulted in the quality grade being reduced from No. 2 to No. 3. The commodity price established for No. 2 yellow corn was \$3.00 per bushel. The farmer, due entirely to a *reduction in quality*, received \$1.50 per bushel. Therefore, when computing the disaster loss, the *quantity* produced would be reduced by 50% to reflect the *quality* loss.

| | Established criteria | Disaster year actuals |
|-------------------------------|----------------------|--------------------------|
| Yield | 100 bu/acre | 100 bu/acre |
| Grade quality | No. 2 yellow corn. | No. 3 yellow corn |
| Established price per bushel. | \$3.00 | \$1.50 (actual received) |

Price per Unit Disaster Year (\$1.50) Divided by Price per Unit Normal Year (\$3.00) equals Quality Reduction (.5 or 50%)

Quality Reduction × Disaster Year Actual Production = Quality (for loss calculation)

.5 × 100 bushels per acre = 50 bushels per acre
50 bushels per acre will be entered on Form FmHA 1945-26 as the disaster year yield to reflect the quality reduction.

Example II: A cotton farmer usually produces No. 2 cotton. In the disaster year, the farmer produced No. 3 cotton and this quality loss resulted in a grade reduction amounting to a dockage of \$100.00 per bale (550 lbs.). The farmer's ASCS established yield is 550 lbs. per acre. The farmer produced 600 lbs. per acre in the disaster year. The established price for cotton for the disaster year is \$330.00 per bale (.60 cents per pound).

$$\frac{230}{330} = .70$$

.70 × 600 = 420 lbs. per acre

420 lbs. per acre would be entered on FmHA Form 1945-26 as the disaster year yield to reflect the quality reduction.

In this example the farmer would not be eligible for an EM loss loan since the farmer suffered only a 24 percent loss.

$$\frac{420 \text{ lbs./acre}}{550 \text{ lbs./acre}} = 76\%$$

The calculations used for a quantity reduction due to quality losses must be documented on Form FmHA 1945-26 or on an attachment to that form.

(iv) The gross dollar value of production losses will be computed for all crops and all livestock enterprises that suffered losses due to the disaster, by calculating the value of the disaster year's production and subtracting that amount from the calculated value of the normal production. Unit prices for all agricultural commodities produced commercially in each State will be established on a Statewide basis by all FmHA or its successor agency under Public Law 103-354 State Directors each year, and published in a State supplement to be issued not later than

February 15 of each year. These commodity prices will be established by averaging the *monthly market prices of each commodity for the 12-month period preceding the calendar year in which the disaster occurs*. The monthly average market prices report, "Agricultural Prices," prepared by the National Agricultural Statistics Service (NASS), formerly the Statistical Reporting Service (SRS), will be mailed to each State Office from the FmHA or its successor agency under Public Law 103-354 National Office the first week of each month for the previous month. This report provides the average monthly prices for *all major* agricultural commodities produced in each State. For major commodities not reported monthly by NASS, State Offices will also be sent the NASS publication, "Crop Values Summary." This publication provides a 3-year history of seasonal average prices, by State and United States average, for all crops of any significance produced in the 48 contiguous States and Hawaii. Prices found in this annual publication, available by February 1 of the year succeeding the year being reported, are to be used as a *guide only* in establishing the annual price list of commodity prices only for those commodities for which the monthly average prices are not reported. State Directors *will* consult with other agricultural agency representatives and other agricultural lenders in the local area; and State Directors and Farmer Program Chiefs in adjoining States *will* consult each other for additional guidance before releasing their commodity price lists. Once established, these prices will not be changed for any EM loan processed under any disaster occurring on or after February 1 of that calendar year through January 31 of the next calendar year. These monthly and annual reports will be retained and used for reference each year when preparing the annual price lists of average commodity prices to be used Statewide for calculating actual production loss values, for all disasters that occur during the ensuing 12-month period.

(v) In determining eligibility, the amount of actual production loss will be calculated for the single enterprise, which is a basic part of the farming op-

eration (see §1945.154(a) of this subpart), by subtracting any costs not incurred as explained in paragraphs (a)(2)(xii) and (a)(2)(xiv) of this section from the gross dollar amount of production losses for that enterprise as determined in paragraph (a)(2)(iv) of this section.

(vi) Actual losses for tobacco, peanuts and other crops grown under acreage and/or poundage control will not be calculated differently than any other crop; i.e., the calculations must not include the dollar value of carry-over surplus poundage from previous year's(s') production or underproduced pounds to be sold or produced in future years. The value of underproduced poundage allotments and quotas must not be subtracted from the loss. Production from all "controlled" crop acres planted in the disaster year, including acreage above the producer's allotments and quotas, will be considered even though the carry-over crop is not eligible for price supports until the next marketing year.

(vii) Actual losses for spring and fall annual crops of the same species will be treated as two separate crop losses and listed separately on Forms FmHA 1945-22 and 1945-26. The crop(s) not affected by the disaster will be considered as having produced a normal year's yield.

(viii) The dollar value of the actual production loss for the single enterprise which is a basic part of the farming operation as designated by the applicant in Item F, Form FmHA 1945-22, will be divided by the previously calculated normal year's gross income for that enterprise. The result should be rounded to the nearest whole number. To illustrate, if the calculation shows a 29.49 percent production loss, round it down to 29 percent. If the calculation shows a 29.50 percent loss round it up to 30 percent. This establishes the percentage reduction in production from normal for that enterprise. If the percentage loss in *any* single enterprise (see §1945.154(a) of this subpart) which is a basic part of the farming operation equals or exceeds 30 percent, and the applicant is otherwise eligible, EM loan assistance will be considered.

(ix) Once eligibility is established, based on production losses, the total

production loss sustained by the applicant, directly attributable to the disaster, is computed by adding the gross dollar amount of production losses of all single enterprises, whether or not they constitute a basic part of the farming operation, and subtracting from this total all financial assistance verified as having been received or to be received through any disaster relief program, and all compensation for disaster losses provided by any source for those enterprises.

(x) The maximum EM loan for production losses is limited to *80 percent* of the total calculated actual production loss sustained by the applicant.

(xi) Production losses to hayland, pasture and rangeland used for grazing livestock owned by the applicant must be based on the production from only those acres which are utilized in the disaster year. Losses may be calculated by one of three methods when approved by the State Director. The State Director will decide which one of the following three methods will be used throughout the State to calculate losses to pasture and rangeland; and issue a State supplement to this subpart, setting forth the method(s) to be used Statewide.

(A) *The price per acre method.* The price per acre method is used to calculate pasture losses in the following manner:

(1) Determine the normal year's gross dollar value. To calculate this, multiply *the number of acres available to be grazed for the disaster year by the established rental charge per acre per month* (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by *the average number of months grazed per year during the highest 4 out of the 5 preceding years.*

(2) Determine the disaster year gross dollar value. To calculate this multiply *the number of acres grazed during the disaster year by the established rental charge per acre per month* (as determined in accordance with paragraph (a)(2)(xi)(A)(1) of this section); by *the number of months the livestock were able to be grazed during the disaster year.*

(3) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(A)(2) of this section) from the normal year gross dollar value (see

paragraph (a)(2)(xi)(A)(1) of this section) to determine the value of pasture loss suffered during the disaster year.

(B) *The charge per head or animal unit method.* The charge per head or per animal unit method is used to calculate pasture losses in the following manner:

(1) Determine the normal year gross dollar value. To calculate this, multiply *the number of animals or animal units grazed per month during the disaster year by the established rental charge per animal or per animal unit per month* (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by *the average number of months grazed per year during the highest 4 out of the preceding 5 years.*

(2) Determine the disaster year gross dollar value. To calculate this, multiply *the number of animals or animal units grazed per month during the disaster year by the established normal rental charge per animal or per animal unit per month* (as determined in accordance with paragraph (a)(2)(xi)(B)(1) of this section); by *the number of months grazed during the disaster year.*

(3) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(B)(2) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(B)(1) of this section) to determine the value of pasture loss suffered during the disaster year.

(C) *The forage equivalent method.* The forage equivalent method is used to calculate pasture losses in the following manner:

(1) Determine the normal year gross dollar value. To calculate this, multiply the number of acres grazed during the disaster year by the established price per pound or ton (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by the average number of pounds or tons of forage equivalent produced per acre per year during the average of the highest 4 out of the preceding 5 years for forage of the type being used in this calculation. (The State Office will set forth the forage equivalent values to be used or the methodology to be used for deriving this value, in a State Supplement. This information may be set forth on a countywide or statewide basis. The State Director may contact the State's

Extension Service or other knowledgeable sources to assist in establishing the forage equivalent determination.)

(2) Determine the disaster year gross dollar value. To calculate this, multiply *the number of acres grazed during the disaster year by the established price per pound or ton* (this figure is established by the State Director in accordance with paragraph (a)(2)(xi)(C)(1) of this section); *by the number of pounds or tons of forage equivalent produced for forage of the type being used in this calculation produced in the disaster year.* (See paragraph (a)(2)(xi)(C)(1) of this section for further information.)

(3) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(C)(2) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(C)(1) of this section) to determine the value of pasture loss during the disaster year.

(xii) When a crop cannot be planted, an applicant may treat the loss either as a production loss or as a physical loss (see paragraph (b) of this section). When a crop cannot be planted and the applicant chooses to treat the loss as a production loss, the loss will be calculated as set out in this paragraph as follows: Add all income that is derived from the enterprise to the variable costs which were not incurred because of the disaster. (The cost figures will be derived from current crop enterprise budgets prepared by State Agricultural Extension Service economists, based on normal farming conditions in the area.) Subtract this figure from the value of the normal year's production. The resulting figure is the gross dollar amount of production loss.

(xiii) When a crop can be only partially planted due to a disaster *or* when perennial crops (such as fruits or nuts) already growing cannot be produced or harvested due to a disaster, the loss will be considered a production loss. Such loss will be calculated as set out in paragraph (a)(2)(xii) of this section.

(xiv) When a crop is planted and completely destroyed by a disaster, a yield of "zero" may be shown on Form FmHA 1945-22 for the disaster year, but only if no part of the crop could be harvested and no substitute crop could be planted and harvested. When figuring the actual dollar amount of production

losses, subtract the normal costs of harvesting and marketing which were not incurred for crops that were completely destroyed by a disaster. If a substitute crop is planted and harvested during the same crop year, a yield of "zero" should be shown for the original crop, and the actual yield for the substitute crop on Form FmHA 1945-22. On Form FmHA 1945-26, the dollar value of the substitute crop must be added to the dollar value of the disaster year's production and income.

(xv) Losses to feed crops will be established by determining the normal year's gross dollar value of those crops and subtracting the disaster year's gross dollar value of feed crops. The difference establishes the disaster year's gross dollar loss for feed crops. The gross dollar value of feed crops produced is derived by multiplying the number of feed crop acres by the yield per acre by the unit price.

(xvi) When an applicant elects to sell feeder livestock at an earlier date than usual rather than purchase feed to replace that which was lost as a result of the disaster, that is a management decision; and the difference between what the sale weight would have been if the livestock had been fed for the normal period and the disaster year's lighter, premature sale weight may *not* be claimed as a loss.

(xvii) Calculation of production losses to livestock enterprises may be based either on loss of production in feed crops, including pasture, to be fed to the applicant's own livestock; *or* on loss (from normal) of weight gain of the livestock or livestock products produced, but not both. Normally, calculations of production losses to livestock enterprises will be based on feed crop(s) and pasture losses. In the case of foundation herds of breeding animals; however, the value of feed produced on native rangeland and pasture constitutes a small portion of the total input costs of maintaining a foundation herd of breeding animals and their offspring. Therefore, loan approval officials normally will calculate production losses to this type of livestock operation based on reductions in the natural increase in numbers and animal unit weight of such offspring. (Example

available in any FmHA or its successor agency under Public Law 103-354 of-fice.)

Example: A rancher has accurate records indicating that the rancher's 200 head foundation breeding cow herd produced a normal calf crop average of 85 percent (170 calves) with an average weaned weight of 350 pounds per calf. As a result of a drought, the rancher found it necessary to cull the cow herd by 50 cows over the normal number culled.

The predisaster value of the cows was \$600 per head. The rancher received 35 cents per pound for the cull cows, which had an average weight of 1100 pounds.

Additionally, the rancher's calf crop was only 70 calves with an average weight of 240

pounds in the disaster year (DY). Therefore, the rancher would have sustained a physical loss on the cow herd (see § 1945.163(b)(6)(i)(B)) and a production loss on the calf crop.

The established price for calves is 60 cents per pound.

CALCULATIONS:

The rancher's normal year's (NY) calf crop was 85 percent. Since the rancher reduced the breeding herd by 50 cows, an adjustment must be made to determine the calf losses. The reduced herd size is now 150 cows.

150 cows × 85% = calves (NY calf crop from a herd of 150).

| | | | |
|---------------------|---------------|----------|-----------|
| Normal year | 128×.60×350 = | \$26,880 | NY income |
| Disaster year | 70×.60×240 = | \$10,080 | DY income |
| | | <hr/> | |
| | | \$16,800 | Loss |

16,800

26,880=63% production loss

Additionally, an EM loan may be made based on the physical loss of 50 cows. (See example in § 1945.163(b)(6)(i)(B).)

(xviii) Any claims of production losses from the applicant will be verified by FmHA or its successor agency under Public Law 103-354 when the applicant's claim(s) appears to be unreasonable.

(xix) Claims of production losses for orchard crops (fruits or nuts) will be considered only for the crop loss directly attributable to the qualifying disaster and determined in accordance with paragraph (a)(2) of this section.

(xx) When an applicant's farming operation(s) is conducted in a designated county(ies) and nondesignated county(ies), eligibility will be established based on losses to a single enterprise as explained in paragraph (a)(2)(v) of this section, which constitutes a basic part of the total farming operation, without regard to whether the single enterprise is located in the designated county. The disaster year's actual yields, both in the designated and nondesignated county(ies) only, will be used to determine losses. Costs not incurred (if applicable) will be subtracted as explained in paragraphs (a)(2)(xii) and (a)(2)(xiv) of this section. The amount of the production loss loan, however, will be limited to the production loss

sustained in the designated county(ies) only minus any compensatory payments received or to be received for that portion of the farming operation located in the designated county(ies).

(xxi) The County Supervisor will assign normal yields to all unplanted acreage covered by a Payment in Kind (PIK) contract, when calculating crop production losses on Form FmHA 1945-26.

(b) *Physical losses.* (1) In order to qualify for an EM loan(s) for physical losses, the damaged or destroyed physical property must be essential to the successful operation of the farm and if not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis. The financing necessary to recover from the physical loss must be actually needed to permit the applicant to continue the operation.

(2) The claimed value of all physical losses due to disaster damage or destruction must be supported by written estimates for the necessary repair or replacement requested.

(3) Physical loss loan funds can be used to pay for only contracted or hired labor and materials and supplies purchased. Labor, machinery, equipment, and materials contributed by the applicant or borrower will not be chargeable to the cost of necessary repair and replacement.

(4) Damage to or destruction of non-essential buildings, structures or other items will not be repaired or replaced with EM physical loss loan funds. Any insurance compensation received or to be received for such losses will be considered as compensation for losses to essential farm buildings, structures and other items which need to be repaired or replaced.

(5) The maximum physical loss loan(s) will be determined by subtracting all financial assistance provided through any disaster relief program and all compensation for disaster losses provided by any source from the value of all actual physical losses caused by the disaster.

(6) The physical loss for the following items equals the market value at the time of the disaster for items lost, damaged or destroyed by or as a result of the disaster:

(i) Livestock.

(A) Death of an animal(s) caused by the disaster.

(B) Disaster related damage to an animal's(s') health, which has impaired or reduced its normal production capability and its market value. This includes forced reductions of foundation breeding stock caused by the disaster. Physical losses, under these conditions, would be calculated by establishing a dollar value per head, or unit, at the time the disaster occurred, and deducting the reduced dollar value received from the disaster-caused sale of the animals. The difference in the two values would be considered a physical loss. *(THE ANIMALS SOLD MUST BE OVER AND ABOVE THE NUMBERS NORMALLY CULLED EACH YEAR).*

Example: A physical loss would be calculated as follows:

Predisaster market value—50 cows×\$600/
cow=\$30,000

Price received for cull cows—50 cows×1100
lbs.×35″=\$19,250.

Physical loss=\$10,750 (\$30,000—\$19,250)

(ii) Livestock products on hand or stored.

(iii) Harvested crops on hand or stored.

(iv) Supplies on hand.

(v) Essential machinery and equipment.

(7) The actual physical loss for farm dwellings and essential household con-

tents to be used by the operator and existing labor is the amount required to repair or replace the dwelling and/or household contents with a dwelling and/or contents of like standards, size and quality of that being replaced which will meet all applicable code requirements, and which will provide permanent, adequate, decent, safe, sanitary and modest living quarters.

(8) The actual physical loss for farm service buildings and farm real estate other than buildings is the amount required to repair the property or replace it with a building or property of like standards, size, quality and capacity of that being replaced which will meet all applicable code requirements and which will adequately meet the needs of the farming operation.

(9) The actual physical loss for income-producing trees (fruit or nuts) is the cost of removing the damaged or destroyed trees, cleaning debris and preparing the land for replanting, plus the cost of suitable replacement trees and other expenses necessary to reestablish income-producing trees. Losses will not be determined by establishing a value for the trees destroyed or damaged. Any salvage value will be deducted from the loss. The applicant may choose to replace the damaged or destroyed trees with a different enterprise and may use actual loss loan funds for that purpose. (See exhibit D of this subpart for physical loss loans to citrus growers.)

(10) The actual physical loss to trees (grown for timber) will be determined by establishing the value of trees, at the time of the disaster, less any salvage value. This estimate of value must be determined by a recognized forester who will cruise the timber and establish the value of the destroyed and damaged trees. The applicant may choose to replace the damaged tree enterprise with a different enterprise and use the actual loss loan funds for that purpose. Those applicants whose major farming enterprises are other than tree farming, but who have a wood lot that has been damaged, will have their tree losses considered as physical losses in the same manner as set forth for tree farms.

(11) The actual physical loss to growing crops or pasture is the cost of

cleaning debris, preparing the land for replanting, seed, fertilizer, and other expenses necessary to *reestablish* the crop(s) or pasture. These costs can exceed the market value of the crop(s) or pasture at the time of the disaster.

(12) When a crop cannot be planted during the disaster year due to the disaster and the applicant chooses to treat the loss as a physical loss, the actual physical loss is limited to the cost of land preparation, other expenses incurred to the date of the disaster for crops that could not be planted, and a pro rata share of the total operation's fixed costs such as rent, taxes, and insurance. The applicant must provide an itemized list of all the claimed expenses incurred in the disaster year for those enterprises for which disaster losses are claimed. This list must be signed by the applicant. The amount of an EM loan cannot exceed the total itemized expenses listed by the applicant.

(13) EM loans will not be made to flood and mudslide victims to repair or replace damaged or destroyed farm dwellings or farm service buildings and their contents in areas where "National Flood Insurance" is available, except as authorized in § 1945.173(b) of this subpart.

(14) When an applicant has *dwelling* losses only, the applicant may apply for either an EM loan or SBA disaster housing loan to restore or replace the dwelling and personal household contents affected by the disaster.

(c) *Personal household content losses (Subtitle B purposes)*. (1) In order to qualify for EM loan assistance for this purpose, the damaged or destroyed household property must be essential to the maintenance of the household; and if not repaired or replaced, the farmer would be unable to remain on the property and continue the farming operation on a reasonably sound basis.

(2) The claimed value of all household losses due to disaster damage or destruction must be supported by written estimates for the necessary repair or replacement.

(3) Labor, equipment, and materials contributed by the applicant or borrower will not be chargeable to the cost of necessary household repairs and replacements.

(4) Damage to or destruction of non-essential household items will not be replaced or repaired with EM loan funds. Any insurance compensation received or to be received for such losses will be considered as compensation for those losses.

(5) The maximum EM loan(s) for repair or replacement of personal household contents is \$20,000.

(6) The EM loan(s) will be determined by subtracting all insurance claims and other compensation received or to be received for household losses from the cost of repairs or replacement value of the essential household items.

(d) *Compensation for losses*. All financial assistance provided through any disaster relief program and all compensation for disaster losses received from any source (i.e., crop insurance indemnity payments, ASCS disaster program payments, etc.) by an EM loan applicant will reduce the applicant's loss by the amount of such compensation. All such compensation will be considered in determining the maximum amount of loss loan entitlement. Disaster related assistance/compensation will not be considered in the EM eligibility calculation. The amount of any disaster program benefits received from ASCS, including the Emergency Feed Assistance Program (EFAP), Emergency Conservation Program (ECP), and Disaster Program payments will be considered as compensation for losses. (ASCS Deficiency Payments are not to be considered as compensation).

(e) *EM loan limit*. The loan will be limited to the amount necessary to restore the farm to its pre-disaster condition; however, this amount cannot exceed the lesser of the sum of the maximum production loss (paragraph (a)(2)(x) of this section) and the maximum physical loss (paragraph (b) of this section) or \$500,000 total outstanding EM debt per borrower. The maximum principal amount of total EM debt that any one individual, business entity, or individual member of a business entity may have outstanding is \$500,000.

[53 FR 30392, Aug. 11, 1988, as amended at 55 FR 21530, May 25, 1990; 56 FR 24682, May 31, 1991; 58 FR 26682, May 5, 1993; 59 FR 16774, Apr. 8, 1994; 61 FR 35926, July 9, 1996; 62 FR 9357, Mar. 3, 1997]

§ 1945.164–1945.165 [Reserved]

§ 1945.166 Loan purposes.

(a) *Policy on use of EM loan funds.* (1) The maximum amount of an EM loan(s), in addition to the limitations contained in § 1945.163(a)(2)(x) and (e) of this subpart, is further limited to the actual dollar loss, or the actual amount of essential family and farm credit, that the applicant needs to carry on normal operations. The use of EM loan funds will be identified in the farm and home plan so that determination can readily be made as to whether such loan(s) was used for authorized purposes and compensated the borrower for all or a portion of the actual dollar loss.

(2) EM loan funds may be used for those purposes described in paragraphs (b) and (c) of this section.

(b) *Real estate (Subtitle A) purposes.* EM loans for real estate purposes may be made to *owner-operators only*. The following are authorized real estate purposes for which EM loan funds may be used:

(1) Any Farm Ownership loan purpose (see subpart A of part 1943 of this chapter);

(2) Replace land and/or water resources that cannot be restored due to the disaster;

(3) Establish a new site for farm dwellings and service buildings so that the applicant can relocate outside of a flood or mudslide prone area;

(4) Replace land necessary to restore an effective operation which was liquidated as a result of the disaster before an EM loan could be made.

(c) *Operating (Subtitle B) purposes.* EM loans for operating purposes may be made to *owner-operators or tenant-operators*. The following are authorized operating purposes for which EM loan funds may be used:

(1) Any Operating Loan purpose (see subpart A of part 1941 of this chapter);

(2) Purchase and repair of essential household contents, and pay essential family living expenses. Entity operations are not eligible for loan funds to be used for these purposes.

(3) Pay reasonable expenses customarily paid when obtaining, planning and closing a loan made for operating purposes, e.g., fees for legal, ar-

chitectural and other technical services, which are required to be paid by the applicant, and which cannot be paid by the applicant from other resources. It is not intended that this paragraph be interpreted to include fees charged applicants by agricultural management consultants and other professionals for preparation of EM loan dockets, including farm and home plans and other Agency or its successor agency under Public Law 103-354 forms used in processing such loans.

[53 FR 30392, Aug. 11, 1988, as amended at 61 FR 35926, July 9, 1996; 62 FR 9357, Mar. 3, 1997]

§ 1945.167 Insurance, loan limitations and special provisions.

(a) EM loan funds cannot be used for physical loss purposes unless that physical property lost was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefit of the coverage (the lesser of the property's tax or cost depreciated value) was greater than the cost of the insurance..

(b) Applicants must comply with the CAT insurance requirement no later than loan closing by either:

(1) Obtaining at least the CAT level of coverage, if available, for each crop of economic significance as defined by the Federal Crop Insurance Corporation, or,

(2) By waiving eligibility for emergency crop loss assistance in connection with the uninsured crop. FSA EM loan assistance is not considered emergency crop loss assistance for the purpose of the crop insurance waiver on the uninsured crop.

(c) *Relationship between EM loans and other Agency loans.* An eligible EM loan applicant's *total* credit needs *will* be first considered through use of EM loan authorities in the maximum amount of entitlement, before other regular (FO, OL, SW) Farm Credit Programs loan authorities are considered and used as a means of assisting the applicant/borrower.

(d) *Use of EM loan funds is not authorized for expansion purposes beyond a family size farm.* EM loan funds will not be used to expand an applicant's farming, ranching, or aquaculture operation beyond that which constitutes a family size farming/ranching operation. This limitation is not intended to prohibit minor changes in crop or livestock enterprises, provided:

- (1) Any new or changed crop or livestock system is proven for the area; and
- (2) The applicant has the knowledge and ability to manage the changed operation; and
- (3) Substantial new or additional capital investment is not required.

EM applicants who operate family farms (as defined in §1941.4 of subpart A of part 1941 of this chapter) may, if eligible, receive regular FmHA or its successor agency under Public Law 103-354 farm ownership (FO), and/or operating (OL) loans simultaneously with their initial (EM) loan to help finance their farming operations. If a borrower expands the farming operation beyond a family size farm after receiving an EM loan, no further EM loan assistance will be given even though the borrower may suffer qualifying losses under a new declared/designated/authorized disaster.

(e) *Applicants involved in more than one operation.* Loans to applicants involved in more than one farming operation will be considered so long as the loan limit set out in §1945.163 (e) of this subpart is not exceeded.

(f) *Refinancing guaranteed loans.* An EM loan will not be made to refinance a guaranteed loan, except when the following conditions are met:

- (1) The circumstances causing the need to refinance were beyond the borrower's control.
- (2) Refinancing is in the best interest of the Government.

(g) *New appraisals.* New "Appraisal of Real Estate Reports" are not required if the appraisal report in the file is not over one year old, unless the approval official requests a new appraisal report, or unless significant changes in the market value of real estate have occurred in an area within the one-year period. Any changes in the value of real estate or chattel security will be

recorded, dated and initialed by the certified appraiser on the appropriate appraisal reports in the file.

(h) [Reserved]

(i) *Prohibition on guaranteeing repayment of advances from other credit sources.* Agency or its successor agency under Public Law 103-354 employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or Agency or its successor agency under Public Law 103-354.

(j) *Highly erodible land and conversion of wetland.* Loans may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands for the production of an agricultural commodity, as further explained in exhibit M to subpart G of part 1940 of this chapter.

[53 FR 30392, Aug. 11, 1988, as amended at 56 FR 10147, Mar. 11, 1991; 57 FR 54173, Nov. 17, 1992; 61 FR 35926, July 9, 1996; 62 FR 9357, Mar. 3, 1997; 62 FR 28619, May 27, 1997]

§ 1945.168 Rates and terms.

(a) *Interest rates.* Upon request of the applicant, the interest rate charged by the Agency will be the lower of the interest rate in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in exhibit B of FmHA Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office) for the type assistance involved. Interest on the initial advance will accrue from the date of the promissory note. Interest on other advances will accrue from the date of the loan check for each such advance.

(b) *Terms of loans.* Loans will be scheduled for repayment at such time as the FmHA or its successor agency under Public Law 103-354 approval official may determine, consistent with the purpose of and need for the loan. The approval official will also consider the useful life of the security and the repayment ability of the applicant, as reflected in the completed farm and home plan, when setting the term of

each loan. There must be some payment, e.g., an irregular payment, scheduled at least annually. Loans will not be scheduled for terms longer than are justified and supported by the farm and home plan. EM loans based on production losses and/or physical losses to chattels, foundation livestock and other intermediate term capital assets cannot exceed a 20 year payback; and EM loans based on physical losses to real estate, e.g., land, buildings and structures cannot exceed a 40 year payback.

(1) *Operating purposes (Subtitle B).* EM loans made for operating purposes will be scheduled for repayment as follows:

(i) Normally, loans will be scheduled for payment in a period not to exceed 7 years. However, loans may be scheduled for a longer repayment period if the FmHA or its successor agency under Public Law 103-354 approval official determines that the needs of the applicant justify a longer term, and the loans can be secured for the longer term. Such longer period may be approved as warranted, but cannot exceed 20 years. This longer repayment period will be used only when the farm and home plan projections indicate the applicant would be unable to repay the loan in a shorter period, taking into consideration rescheduling possibilities. The reasons that a term longer than 7 years is given must be documented in the County Office case file.

(ii) Loans made for production expenses under §1945.166(c) of this subpart, or for payment of bills incurred for such purposes for the operating or crop year being financed, will be scheduled for repayment when the principal income from the year's operations is normally received, *unless* the loan will be adequately secured with a lien on items of collateral other than crops that are to be produced with the loan funds. In the latter event, repayment terms must comply with paragraph (b)(1) (i) and (iii) of this section.

(iii) Loans made to purchase or produce feed for productive livestock or livestock to be fed for the market, or to pay bills incurred for such purposes for the crop year being financed, will be scheduled for repayment when the principal income from the sale of such livestock or livestock products is

planned to be received, *unless* the loan will be adequately secured with a lien(s) on items of collateral other than the livestock and livestock products that are to be produced with the loan funds. In the latter event, repayment terms must comply with paragraph (b)(1) (i) and (ii) of this section.

(iv) When conditions warrant, installments may vary in amount. However, there must be at least a partial interest payment scheduled annually. Also, the final installment will not be larger than the amount which can be expected to be refinanced by other agricultural lenders or be repaid within a rescheduled period of 15 years. The applicant must be advised before the loan is closed that FmHA or its successor agency under Public Law 103-354 will review each case at the end of the initial loan term to determine if rescheduling is warranted, and that there is no obligation for FmHA or its successor agency under Public Law 103-354 to continue with the borrower after the expiration of the initial loan term.

(2) *Real estate purposes (subtitle A).* EM loans made for real estate purposes under §1945.166(b) of this subpart will normally be scheduled for repayment for a term not to exceed 30 years. Loans may be scheduled for a longer repayment period if the FmHA or its successor agency under Public Law 103-354 approval official determines that the needs of the applicant justify a longer repayment period. A longer term may be approved as warranted, but cannot exceed 40 years. The longer repayment period will be used only when it is evident the applicant will be unable to repay the loan in a shorter period. The reason(s) for giving the longer period must be well documented in the County Office case file.

(c) *Consolidation, rescheduling and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with subpart S of part 1951 of this chapter.

(d) *Graduation.* Borrowers will be required to graduate when FmHA or its successor agency under Public Law 103-354 determines they are able to obtain their needed credit from conventional

sources. All borrowers will be advised that they will be reviewed for graduation periodically in accordance with the graduation procedure in subpart F of part 1951 of this chapter. EM borrowers will be reviewed for graduation three (3) years after their initial loan is made and every two (2) years thereafter, until graduation is achieved or the EM indebtedness is paid in full. Applicants will be advised during loan processing and again at loan closing that they will be required to refinance at any time when other satisfactory credit is available to them, even though their loans have not fully matured.

[53 FR 30392, Aug. 11, 1988, as amended at 53 FR 35716, Sept. 14, 1988; 55 FR 21532, May 25, 1990; 61 FR 35926, July 9, 1996]

§ 1945.169 Security.

Each EM loan will be secured by chattels, real estate, and/or other security and nonessential assets in accordance with this section. The same collateral may be used to secure two or more loans made, direct or guaranteed, to the same borrower. Thus, a junior lien on property serving as collateral for a guaranteed loan(s) is acceptable. In cases when a loan is being made in conjunction with a servicing action, the security requirements as stated in subpart S of part 1951 of this chapter will prevail.

(a) *Security for operating type purposes.* Primary security must be available for the loan, except as provided for in paragraph (g) of this section. Any additional security available up to and including 150 percent of the loan amount also will be taken. Except as provided in paragraph (c) of this section, security in excess of 150 percent of the loan amount will only be taken when it is not practical to separate the property, i.e., same type of livestock (dairy cows, brood sows). In unusual cases, the loan approval official may require a cosigner in accordance with § 1910.3 (d) of subpart A of part 1910 of this chapter, or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(1) *Chattels.* The loan must be secured by:

(i) A first lien on all property or products acquired, produced, or refinanced with loan funds;

(ii) If the security for the loan under paragraph (a)(1)(i) of this section is not at least equal to 150 percent of the loan amount, the best lien obtainable will be taken on other chattel security owned by the applicant, if available, up to the point that security for the loan at least equals 150 percent of the loan amount.

(A) When there are several alternatives available (cattle, machinery), any one of which will meet the security requirements of this section, the approval official generally has the discretion to select the best alternative for obtaining security.

(B) When alternatives exist and the applicant has a preference as to the property to be taken for security, however, the approval official will honor the preference so long as the requirements of paragraphs (a)(1)(i) and (ii) of this section are met.

(iii) To comply with the 150 percent requirement, security values will be established as follows:

(A) *Annual production.* For the purposes of loan making only, the security value of the crop and/or livestock production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses listed on Form FmHA or its successor agency under Public Law 103-354 Form 431-2, "Farm and Home Plan," or other acceptable plan of operation.

(B) The specific livestock and/or equipment to be taken as security, along with the value of the security, will be documented in the case file. This information will be obtained from values established in accordance with § 1945.175 (c) of this subpart.

(2) *Real estate.* The loan approval official will require a lien on all or part of the applicant's real estate as security when chattel security alone is not at least equal to 150 percent of the amount of the loan. A lien, however, will not be taken on the applicant's personal residence and appurtenances, when the residence is located on a separate parcel and the farm tract(s) being used for collateral, in addition to any

crops or chattels, meet the security requirement of at least equal to 150 percent of the loan. Different lien positions on real estate are considered separate and identifiable collateral. Real estate taken as security, along with its value established in accordance with § 1945.175 (c) of this subpart, will be documented in the case file. If the applicant disagrees with the values established, FmHA or its successor agency under Public Law 103-354 will accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FmHA or its successor agency under Public Law 103-354 requirements.

(3) *Other security.* (i) A pledge of real estate or chattels by a third party will be taken as security when the property owned by the applicant does not provide primary security.

(ii) Other available property that cannot be converted to cash without jeopardizing the applicant's farm operation or imposing substantial financial penalty on the applicant will be taken as security when the property owned by the applicant does not provide primary security. Examples of such security include, but are not limited to, cash surrender value of life insurance, securities, patents and copyrights, and membership or stock in cooperatives and associations.

(b) *Security for real estate type purposes.* Primary security must be available for the loan, except as provided for in paragraph (g) of this section. EM loans made for subtitle A (real estate) purposes will be secured by real estate. Chattels and/or other security will only be taken as security as set forth in paragraphs (b)(2), (b)(3), and (c) of this section. The total amount of security required will be the lesser of either 150 percent of the loan amount, or all real estate owned by the applicant. A loan will be considered adequately secured when the real estate security for the loan is at least equal to the loan amount. Except as provided in paragraph (c) of this section, security in excess of 150 percent of the loan amount will only be taken when it is not practical to separate the property, i.e., a tract of land. All security taken, along with the value of security, will be documented in the case file. This informa-

tion will be obtained from values established in accordance with § 1945.175 (c) of this subpart. If the applicant disagrees with the real estate values established, FmHA or its successor agency under Public Law 103-354 will accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FmHA or its successor agency under Public Law 103-354 requirements. In unusual cases, the loan approval official may require a co-signer in accordance with § 1910.3 (d) of subpart A of part 1910 of this chapter, or a pledge of security from someone other than the applicant(s). A pledge of security is preferable to a cosigner.

(1) *Real estate security.* (i) A mortgage will be taken on all real estate repaired or rehabilitated, refinanced, or improved with EM funds, and by any additional real estate security needed to meet the requirements of this section.

(ii) Security will also include assignments of leases or leasehold interests which have mortgageable value, water rights, easements, rights of way, mineral rights, and royalties.

(iii) A first lien is required on real estate, when available. Loans may be secured by a junior lien on real estate provided:

(A) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, and other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the loan unless any such undesirable provision is waived, modified, or subordinated insofar as the Government is concerned.

(B) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA or its successor agency under Public Law 103-354 whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in subpart B of part 1927 of this chapter, except as modified by the "Memorandum of Understanding-FCA-FmHA or its successor agency under Public Law 103-354," FmHA Instruction 2000-R (available in any FmHA or its successor agency under Public Law 103-354 office).

(2) *Chattel security.* Loans will be secured by chattels as follows:

(i) A first lien will be taken on equipment or fixtures purchased or refinanced with loan funds whenever such property cannot be included in the real estate lien and the best lien obtainable on all real estate does not provide primary security for the loan.

(ii) Chattel security will be obtained when the best lien obtainable on all real estate does not provide primary security for the loan.

(iii) The same collateral may be used to secure two or more loans made, direct or guaranteed, to the same borrower. Therefore, junior liens on chattels may be taken when there is enough equity in the property. However, when possible, a first lien on selected chattel items should be obtained.

(iv) Chattel security liens will be obtained and kept effective, as provided in subpart A of part 1962 of this chapter.

(3) *Other security.* (i) A pledge of real estate by a third party may be taken as security when the real estate owned and to be acquired by the applicant does not provide primary security for the loan.

(ii) Other property may be taken as security when the real estate owned and to be acquired by the applicant does not provide primary security. Examples of such security include but are not limited to cash surrender value of life insurance, securities, patents and copyrights, and membership or stock in cooperatives and associations.

(c) *Nonessential assets.* Nonessential assets are assets which the applicant has an ownership interest in that do not contribute a net income to pay family living expenses or to maintain a sound farming operation (see § 1962.17 of subpart A of part 1962 of this chapter for further guidance). A lien will be taken on all nonessential assets, with an aggregate value exceeding \$5,000, if an applicant cannot or will not dispose of the assets and use the proceeds to reduce the FmHA or its successor agency under Public Law 103-354 credit needs prior to loan closing. When the value does not exceed \$5,000, the County Supervisor will estimate and document such value in the case file, but

will not take a lien on the assets. The 150 percent security requirement does not apply to nonessential assets.

(d) *Exceptions.* The County Supervisor will clearly document in the file when security is not taken for any of the following reasons:

(1) A lien will not be taken on property that could have significant environmental problems/costs (e.g., known or suspected underground storage tanks or hazardous wastes, contingent liabilities, wetlands, endangered species, historic properties). Guidance is provided in part II, item H of exhibit A of FmHA Instruction 1922-E (available in any FmHA or its successor agency under Public Law 103-354 office) as to the action to be taken when the appraiser indicates that the property is subject to any hazards, detriments or limiting conditions.

(2) A lien will not be taken on property that cannot be made subject to a valid lien.

(3) A lien will not be taken on the applicant's personal residence and appurtenances, when the residence is located on a separate parcel and the farm tract being financed, refinanced, improved, or otherwise used for collateral provides primary security for the loan(s).

(4) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary family living expenses; all types of retirement accounts; personal vehicles necessary for family living and farm operating purposes; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(5) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(6) A lien will not be taken on marginal land, including timber, when a softwood timber (ST) loan is secured by such land.

(7) When a loan is made for real estate purposes, a lien will not be taken

on chattels if it will prevent the applicant, or members of an entity applicant, from obtaining operating credit from other sources or the FmHA or its successor agency under Public Law 103-354.

(8) Chattel security liens will be obtained and kept effective as notice to third parties as provided in subpart B of part 1941 and subpart A of part 1962 of this chapter.

(e) *Personal liability.* The promissory will be signed as follows:

(1) *Individuals.* Only the applicant will sign the note as a borrower. If a cosigner is needed (see § 1910.3(d) of subpart A of part 1910 of this chapter), the cosigner will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA or its successor agency under Public Law 103-354 is to incur individual personal liability regardless of any State law to the contrary.

(2) *Cooperatives or corporations.* The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

(3) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as individuals.

(f) *Personal and corporate guarantees by cosigners.* (1) The loan approval official may require additional personal and/or corporate guarantees by a cosigner(s), including guarantees from parent, subsidiary or affiliated companies; relatives of the applicant; or any other willing party having equity in mortgageable assets. The loan approval official will require that such guarantees be secured by collateral which has equity value.

(2) Guarantors of applicants will:

(i) In the case of personal guarantees, provide current financial statements (not over 30 days old at time of filing),

signed by the guarantors and disclosing community or homestead property.

(ii) In the case of corporate guarantees, provide current financial statements (not over 30 days old at time of filing), certified by an officer of the corporation.

(3) When security is taken under paragraph (f) of this section, chattel security will be serviced in accordance with subpart A of part 1962 of this chapter. Real estate security will be serviced in accordance with subpart A of part 1965 of this chapter.

(g) *Applicant's repayment ability.* When adequate security is not available because of the disaster, the loan approval official will accept as security such collateral as is available, if the following conditions are met:

(1) A portion or all of the security has depreciated in value *due to the disaster*; and

(2) The available security, together with the approval official's confidence in the applicant's repayment ability, is adequate to secure the loan. When considering "repayment ability" as a form of security, the reserve or margin between the balance available for debt repayment shown on the farm and home plan, and the principal and interest scheduled for payment is the "repayment ability" collateral which may be considered in loan making actions when this plan is developed for the typical year. The "typical year" plan must show that the portion of the loan secured by "repayment ability" will be paid back in a reasonable period of time, i.e., the loan balance will be reduced to a fully secured loan within 3 years.

(h) *Purchase contracts.* If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(1) The applicant must be able to provide a mortgageable interest in the real estate.

(2) The applicant and the seller must agree in writing that any insurance proceeds received for real estate losses will be used only to replace or repair the damaged real estate improvements which are essential to the farming operation; or used for other essential real estate improvements; or paid on the

EM loan or on any prior real estate indebtedness, including the purchase contract. If necessary, the applicant will negotiate with the seller to arrive at a new contract without any provisions objectionable to FmHA or its successor agency under Public Law 103-354.

(3) If a satisfactory contract for sale cannot be negotiated or the seller refuses to enter into the agreement described in paragraph (h)(2) of this section, the applicant will make every effort to refinance the existing purchase contract. If the applicant cannot obtain refinancing from another source, EM loan funds may be considered to pay off the contract.

(4) If the conditions set out in paragraphs (h)(1), (2), and (3) of this section exist and an EM loan is approved, it can be closed provided the FmHA or its successor agency under Public Law 103-354 escrow agent or approved attorney certifies on Form 1927-10, "Final Title Opinion," or in separate writing that:

(i) The purchase contract is not subject to summary cancellation on default and does not contain any other provisions which might jeopardize either the Government's security position or the borrower's ability to repay the loan.

(ii) The seller has agreed, in writing, to give FmHA or its successor agency under Public Law 103-354 notice of any breach by the purchaser, and has also agreed to give FmHA or its successor agency under Public Law 103-354 the option to rectify the condition(s) which amounts to a breach within thirty days. The thirty days begin to run on the day FmHA or its successor agency under Public Law 103-354 receives written notice of the breach.

(i) *Prior liens which may jeopardize the Government's security position.* If any prior liens against real estate offered as security contain future advance provisions or other provisions which might jeopardize the security position of the Government or the applicant's ability to meet the obligations of these prior liens and to pay the EM loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions to the interest of the Government. However, the Government's lien may be subject to the lien

of another creditor for amounts advanced or to be advanced for annual operating and family living expenses for the operating or calendar year. The County Supervisor will determine if the creditor will be required to execute Form FmHA or its successor agency under Public Law 103-354 441-13, "Division of Income and Nondisturbance Agreement," or a similar form approved by the OGC.

(j) *Circumstances under which advance notice of foreclosure or assignment is required.* When a junior lien on real estate is to be taken as security for a loan in States where a prior lienholder may foreclose the security instrument under power of sale, or otherwise, and extinguish junior liens of private parties without giving junior lienholders actual notice of the foreclosure proceedings, the prior lienholder must agree in writing to give FmHA or its successor agency under Public Law 103-354 advance notice of foreclosure or will offer to assign the mortgage to FmHA or its successor agency under Public Law 103-354 for the amount of the outstanding debt owed to the prior lienholder.

(k) *Hazard insurance.* Hazard insurance with a standard mortgage clause naming FmHA or its successor agency under Public Law 103-354 as beneficiary may be required for every loan made. The minimum amount of insurance required is the lesser of the replacement cost of the property being insured or the amount of the loan. If essential insurable buildings are located on the property, or if new buildings are to be erected or major improvements are to be made to existing buildings, the applicant will provide adequate hazard insurance coverage at the time of loan closing, or as of the date materials are delivered to the property, whichever is appropriate. Notwithstanding the requirements of subpart A of part 1806 (FmHA Instruction 426.1) of this chapter, when the real estate appraisal report shows that the present market value of the land after deducting the value of buildings shown on the report exceeds the amount of the debt (including the EM loan) and the owner has equity equal to or exceeding the amount of the debt (including the EM loan), real estate property insurance may not

be required. However, the applicant will be encouraged to obtain such insurance, if the applicant does not already have it, to protect the applicant's interest. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that, when settlement is made, the proceeds of such claims will be used for replacement or repair of buildings, application on debts secured by prior liens, or application on the EM loan.

(l) Crop insurance. If crop insurance is obtained, an assignment of indemnity is required. When payment of the insurance premium is not required until after harvest, crops may be released to make the payment. If a loss claim is paid to the borrower, the premium will be first deducted by the insurance carrier before making security releases.

(m) *Indian trust lands*. EM loans which are secured by trust or restricted land will be handled as follows: USDA and the Department of the Interior have agreed that FmHA or its successor agency under Public Law 103-354 loans which are to be secured by real estate liens may be made to Indians holding land in severalty under trust patents or deeds containing restrictions against alienation, subject to statutes under which they may, with the approval of the Secretary of the Interior, give valid and enforceable mortgages on their land. These statutes include, but are not limited to, the Act of March 29, 1956 (70 Stat. 62). When a lien is to be taken on trust or restricted property in connection with a loan to be made or insured by FmHA or its successor agency under Public Law 103-354, the local representatives of the Bureau of Indian Affairs (BIA) will furnish requested advice and information with respect to the property and each applicant. The FmHA or its successor agency under Public Law 103-354 State Director should arrange with the Area Director or other appropriate local official of the BIA as to the manner in which the information will be requested and furnished. A State supplement will be issued to prescribe the actions to be taken by FmHA or its suc-

cessor agency under Public Law 103-354 personnel to implement the making of loans under these conditions.

(n)-(o) [Reserved]

(p) *Assignments and consents*. (1) The value of stock required to be purchased by the Federal Land Bank (FLB) Association borrowers may be added to the recommended market value of real estate, provided:

(i) An assignment can be obtained on the stock; and

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan as long as any FmHA or its successor agency under Public Law 103-354 loan is outstanding, or

(B) The stock refund check is made payable to the borrower and FmHA or its successor agency under Public Law 103-354.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of Form FmHA or its successor agency under Public Law 103-354 1922-1, "Appraisal Report—Farm Tract".

(2) An assignment of all or part of the applicant's share of income is required when title to a livestock or crop enterprise is held by a contractor under a written contract or when the enterprise is to be managed by the applicant under a share lease or share agreement. The contract, share lease or share agreement will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement) and so forth, in paragraph 1. (b) of Form FmHA or its successor agency under Public Law 103-354 440-25, "Financing Statement". A form approved by OGC will be used to obtain the assignment.

[53 FR 30392, Aug. 11, 1988, as amended at 54 FR 2085, Jan. 19, 1989; 54 FR 48229, Nov. 22, 1989; 56 FR 1565, Jan. 16, 1991; 56 FR 67152, Dec. 30, 1991; 57 FR 18679, 18680, Apr. 30, 1992; 58 FR 44753, Aug. 25, 1993; 58 FR 48290, Sept. 15, 1993; 59 FR 16774, Apr. 8, 1994; 59 FR 22961, May 4, 1994; 59 FR 25801, May 18, 1994; 61 FR 35926, July 9, 1996; 62 FR 9357, Mar. 3, 1997; 62 FR 11953, Mar. 13, 1997]

§§ 1945.170–1945.172 [Reserved]**§ 1945.173 General provisions—compliance requirements.**

(a) *Scope of operation to be financed.* Only family size farming operations may be financed with EM loans, subject to the eligibility requirements, loan amount ceilings, repayment ability, need, available security, and other provisions of this subpart.

(b) *Flood or mudslide prone areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of part 1806 of this chapter (FmHA Instruction 426.2) and subpart G of part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms where the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. The flood or mudslide hazard will be recognized in the appraisal report.

(1) In identified special flood or mudslide prone areas as designated by FEMA, the following policies are applicable for EM loans being made to finance buildings or fixtures and furnishings contained therein.

(i) If flood or mudslide insurance is available and an applicant has not taken such insurance and has suffered flood or mudslide losses, an EM loan may be made only if flood or mudslide insurance is purchased before the EM loan is closed.

(ii) If flood or mudslide insurance is available and an applicant previously received and still is indebted for an EM loan, Rural Housing Disaster (RHD), or SBA disaster loan; and a condition of the loan required the obtaining of flood insurance but the applicant allowed the insurance to lapse; and the applicant had new flood or mudslide losses, the applicant will be considered to be in default on the loan agreement and dealt with accordingly.

(iii) If flood and mudslide insurance is available and an applicant had previously received an EM, RHD, or SBA disaster loan; and a condition of the

loan required obtaining flood or mudslide insurance and the applicant paid the loan in full and let the insurance lapse; the applicant will be handled in accordance with paragraph (b)(1)(i) of this section.

(iv) In those areas that have been designated by FEMA as special flood or mudslide hazard areas and flood or mudslide insurance is not available or has been withdrawn by FEMA, an applicant can receive an EM loan provided the farm buildings, including the dwelling, are relocated outside the 100-year flood area.

(v) EM loans to repair or replace farm buildings, including dwellings, must meet the requirements of § 1806.25 (a) or (b) of subpart B of part 1806 of this chapter (paragraph V A or B of FmHA Instruction 426.2) as applicable, or be relocated outside the 100-year flood area.

(2) When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, EM loan funds may be used subject to the following:

(i) The Corps of Engineers or the SCS will be consulted concerning:

(A) Likelihood of flooding.

(B) Probability of flooding damage.

(C) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(ii) Agency or its successor agency under Public Law 103-354 representatives will evaluate the proposal and record the decision in the loan docket in accordance with the requirements of subpart G of part 1940 of this chapter.

(c) *Civil rights.* The provisions of subpart E of part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA or its successor agency under Public Law 103-354 400-4, "Assurance Agreement," in these cases.

(2) Any development financed by FmHA or its successor agency under Public Law 103-354 that will be performed by a contract or subcontract of more than \$10,000.

(d) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of subpart F of part 1901 and subpart G of part 1940 of this chapter will apply.

(e) *Environmental requirements.* See subpart G of part 1940 of this chapter for applicable requirements.

(f) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of subpart I of part 1940 of this chapter apply when EM funds are used involving tracts of less than 25 acres if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(g) *Nondiscrimination requirements.* In accordance with Federal Law, the FmHA or its successor agency under Public Law 103-354 will not discriminate against any otherwise qualified applicant on the basis of race, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract), with respect to any aspect of a credit transaction. The policy statement set forth in § 1945.151(a) of this subpart will also apply to credit transactions.

(h) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including its use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Program Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or aquaculture farming enterprises.

[53 FR 30392, Aug. 11, 1988, as amended at 61 FR 35926, July 9, 1996]

§ 1945.174 [Reserved]

§ 1945.175 Options, planning, and appraisals.

(a) *Optioning land.* When purchasing real property an applicant is responsible for obtaining options in accordance with the provisions contained in § 1943.25 (a) of subpart A of part 1943 of this chapter.

(b) *Planning.* (1) Form FmHA or its successor agency under Public Law 103-354 431-2 or other planning forms that provide similar/necessary information, and Form FmHA or its successor agency under Public Law 103-354 431-4, "Business Analysis-Nonagricultural Enterprise," when appropriate, will be completed as provided in subpart B of part 1924 of this chapter and in accordance with the FMIs. This planning process with the applicant is essential to making sound loans and, therefore, must receive careful attention in development of the loan docket. The plan will show any major items of expenditure and the reason(s) these items are needed. When preparing a plan of operation, it is usually necessary to plan for a capital expenditure reserve during interim years and the typical year. Realistically, this will reflect the depreciating value of machinery, equipment or other essential capital expenditure items, which it is prudent to expect will need to be replaced or require major repair. Also, all recurring and carry-over debts should be considered in a typical year plan. In addition, when all of the loan funds are not to be disbursed at loan closing, a *Monthly Budget* will be prepared showing the specific amount to be disbursed for each associated loan purpose for each month. The funds will be disbursed through use of the loan disbursement

system (future advances) or, when determined necessary, through a supervised bank account.

(2) Development work will be planned and completed in accordance with subpart A of part 1924 of this chapter. Also, the provisions of subpart E of part 1901 of this chapter will be met in connection with EM loans involving recreational enterprises and the construction of buildings.

(c) *Appraisals.* (1) Except as provided in paragraph (c)(1)(i) of this section, real estate appraisals will be completed on Forms FmHA 1922-1 or FmHA 1922-8, "Uniform Residential Appraisal Report," for farm real estate or residential farm real estate, respectively, by a designated FmHA or its successor agency under Public Law 103-354 real property appraiser, or FmHA or its successor agency under Public Law 103-354 State-certified general contract real property appraiser. Appraisals are necessary when real estate is taken as primary security, as defined in § 1945.154 (a) of this subpart, for the EM loan or when loans are serviced in accordance with subpart S of part 1951 of this chapter.

(i) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (c)(1)(ii) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA or its successor agency under Public Law 103-354 designated review appraiser.

(ii) The rights to mining products, gravel, oil, gas, coal, or other minerals will be considered a portion of the security and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA or its successor agency under Public Law 103-354 1922-11, "Appraisal for Mineral Rights."

(iii) When FLB stock is to be used in establishing the recommended market value (RMV) of the real estate being appraised, see § 1945.169 (p)(1) of this subpart.

(iv) A new real estate appraisal is not required if the latest appraisal report available is not over 1 year old, unless the approval official requests a new appraisal, or unless significant changes in the market value of real estate have occurred in the area within the 1-year period.

(v) Real estate appraisals are not required when real estate is taken as additional security, as defined in § 1945.154 (a) of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.

(2) The appraised value of assets securing EM loans is established as of the day before the beginning of the incidence period of the qualifying disaster.

(3) Chattel appraisals will be completed on Form FmHA 1945-15, "Value Determination Worksheet (EM loans only)," when chattels are taken as security. The property which will serve as security will be described in sufficient detail so it can be identified. Sources such as livestock market reports and publications reflecting values of farm machinery and equipment will be used as appropriate. Chattels not owned by the applicant, and non-farm chattel property offered as security (such as planes, house trailers, boats, etc.) will be appraised at the present market value only. Chattels that the applicant did not own on the date set forth in paragraph (c)(2) of this section will be appraised at the present market value.

[53 FR 30392, Aug. 11, 1988, as amended at 55 FR 21532, May 25, 1990; 59 FR 16774, Apr. 8, 1994; 59 FR 25803, May 18, 1994; 62 FR 9357, Mar. 3, 1997; 62 FR 28619, May 27, 1997]

§§ 1945.176-1945.182 [Reserved]

§ 1945.183 Loan approval or disapproval.

(a) *Reverification before approval.* Before an EM loan is approved the following actions must be taken:

(1)-(3) [Reserved]

(4) To prevent the duplication of benefits, FmHA and SBA have agreed to coordinate their respective EM and disaster loan program activities.

(i)-(ii) [Reserved]

(iii) Applicants who receive SBA physical loss loans for losses to dwellings and/or household contents may also file for Agency EM loan assistance based on farm losses other than to dwellings. In those cases where an Agency loan can be approved, Agency will either reduce the Agency EM loan by the amount of the SBA loan (which may require SBA to subordinate its lien position(s)), or refinance the SBA loan by using EM loan funds to pay SBA directly. An EM loan will *not* be approved until it is determined that the requirements of § 1945.163(e) of this subpart will be met. When an EM loan is approved, the Agency County Office will notify the SBA Disaster Area Office pursuant to paragraph (a)(4)(ii) of this section.

(b) *Administrative determination and responsibilities.* When the Agency certification has been made and the reversion has been completed, and before approving the loan, the loan approval official will determine administratively whether:

(1) The Agency has certified, in writing, that the applicant is eligible.

(2) The applicant has satisfactory tenure arrangements on the farm(s) to be operated.

(3) The proposed farm and home operations of the applicant are reasonably sound, the purposes are authorized, and the EM loan is needed.

(4) The proposed loan shows a positive cash flow based upon a realistic farm and home plan.

(5) The security requirements can be met.

(6) The certifications required of the applicant have been made and are a part of the loan docket.

(7) The loan meets all other Agency requirements.

(8) The applicant has access to any additional financing needed to continue the farming operation. In making this determination, consideration will be given to whether the applicant qualifies for OL, FO and SW loan assistance, or for a loan from other creditors with or without Agency subordination.

[53 FR 30392, Aug. 11, 1988, as amended at 55 FR 21532, May 25, 1990; 57 FR 18680, Apr. 30, 1992; 61 FR 35926, July 9, 1996]

§ 1945.184 [Reserved]

§ 1945.185 Actions after loan approval.

Loan funds must be provided by the County Office to the applicant(s) within 15 days after loan approval, unless the conditions prescribed in § 1910.6(d) of subpart A of part 1910 of this chapter are applicable. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(a) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check and obligation will be cancelled, the County Supervisory will notify the State Office of loan cancellation by using Form FmHA or its successor agency under Public Law 103-354 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be cancelled, the check will be returned as prescribed in FmHA Instruction 2018-D (a copy of which is available in any FmHA or its successor agency under Public Law 103-354 office).

(b) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA or its successor agency under Public Law 103-354 1940-10.

(2) When necessary, obtain a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA or its successor agency under Public Law 103-354 440-57, "Acknowledgement of Obligated Funds/Check Request," the revised amount of the loan and the revised repayment schedule.

(c) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan before closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing, unless the change is minor and replacement forms can be readily completed and submitted. In the latter case, a memorandum to that effect will

be attached to the revised forms for referral to the Finance Office.

[53 FR 30392, Aug. 11, 1988, as amended at 54 FR 39728, Sept. 28, 1989; 59 FR 54788, Nov. 2, 1994]

§§ 1945.186–1945.187 [Reserved]

§ 1945.188 Chattel lien search.

See § 1941.63 of subpart B of part 1941 of this chapter for regulations concerning lien searches covering chattels.

§ 1945.189 Loan closing.

(a) *Closing loans secured by real estate*—(1) *General*. Loans secured by real estate are considered closed on the date the mortgage is filed for record. Such loans will be closed in accordance with the applicable provisions of subpart B of part 1927 of this chapter.

(i) For EM loans over \$25,000, title clearance is required when real estate is taken as primary security, as defined in § 1945.154(a) of this subpart.

(ii) For EM loans of \$25,000 or less, and loans for which real estate is taken as primary security, as defined in § 1945.154(a) of this subpart, a certification of ownership and verification of equity in real estate is required. Certification of ownership may be in the form of a notarized affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the County Supervisor is uncertain of the record owner or debts against the real estate security, a title search will be required.

(2) *Security instruments*. Security instruments referred to in paragraph (a) of this section are real estate mortgages or deeds of trust.

(i) FmHA or its successor agency under Public Law 103–354 real estate mortgage or deed of trust Form FmHA 1927-1 (state), “Real Estate Mortgage or Deed of Trust for _____,” will be used in all cases where real estate is taken as security.

(ii) Promissory note(s) will be prepared and completed at the time of loan closing in accordance with the FMI. If insured Rural Housing (RH) funds are advanced simultaneously with EM funds the RH loan will be evidenced by a separate note on the prop-

er form as provided in subpart A of part 1944 of this chapter. However, all notes will be described on the same security instrument(s). When a loan is closed between December 1 and January 1, the first installment will be collected at the time of loan closing.

(iii) When subsequent loans are made, a new security instrument is required only when the existing instruments do not cover all required security or do not secure the subsequent loan.

(iv) A subsequent loan for any authorized purposes may be made without taking new security instruments when the existing security instruments cover all the property required to serve as security for the subsequent loan, the State law and the language of the existing security instruments will permit the future loan advance to be secured by the existing security instruments, and the existing security instruments will provide the same lien priority for the subsequent loan as for the initial loan. A new security instrument will be taken if any one of these requirements is not met.

(3) *Leasholds*. Security instruments for loans secured by leaseholds will describe security in accordance with subpart B of part 1927 of this chapter, and the following provisions will also apply:

(i) The following language, or similar language which in the opinion of the OGC is legally adequate, will be inserted just before the legal description of the real estate:

All Borrower's rights, title, and interest in and to the leasehold estate for a term of _____ years beginning on _____, 19____, created and established by a certain lease dated _____, 19____, executed by _____, as lessor(s), recorded on _____, 19____, in Book _____, Page _____ of the _____ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:

(ii) An additional covenant will be inserted in the mortgage to read as follows:

Borrowers will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of the Borrower's right,

title, or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(iii) A copy of the lease will be made part of the loan docket.

(4) *Filing or recording security instruments.* The following appropriate actions will be taken after loan closing:

(i) When the original security instrument is returned by the recording official, it will be retained in the borrower's case folder. When the original is retained by the recording official, a conformed copy, showing the date and place of recordation and the book and page number, will be prepared and filed in the borrower's case folder. A conformed copy of the security instrument will be sent to a prior lienholder if a substantial interest is held by that lienholder, or if it is required by a working agreement provision with that lienholder.

(ii) The original deed of conveyance, if any, and a copy of the security instrument will be delivered to the borrower.

(5) *Abstracts of Title.* Any abstract of title will be delivered to the borrower and Form FmHA or its successor agency under Public Law 103-354 140-4, "Transmittal of Documents," will be prepared and a receipt obtained in accordance with the FMI. However, when an abstract is obtained from a third party with the understanding it will be returned, such abstract will be sent directly to the third party and a memorandum receipt will be obtained.

(6) *Requesting title service.* When the loan is approved, the County Supervisor will see that title service is requested in accordance with subpart B of part 1927 of this chapter, if this has not already been done.

(7) *Fees.* The borrower will pay all filing, recording, notary and lien search fees incident to loan transactions from personal or loan funds. When FmHA or its successor agency under Public Law 103-354 employees accept cash for these purposes Form FmHA or its successor agency under Public Law 103-354 440-12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FmHA or its successor agency under Public Law 103-354 employees will make it clear to the borrower that any fee so accepted is

only for paying fees on behalf of the borrower, and is not accepted as partial payment on a loan.

(8) *Supervised bank accounts.* If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with subpart A of part 1902 of this chapter. Loan funds not to be disbursed for specific purposes at loan closing and not needed within 30 days after closing, will not be requested until they are needed. The "Field Office Terminal System" will be used to request future advances at 30 day intervals or as needed. Only in unusual cases will loan funds be kept in supervised bank accounts for more than 60 days. When such funds are placed in an interest bearing supervised bank account, the interest earned will be applied on the EM loan immediately or used for an authorized EM loan purpose, if the planned EM funds are not sufficient to cover all of the planned items.

(b) *Closing loans secured by chattels and crops.* See subpart B of part 1941 of this chapter.

(c) *Loan closing review.* Immediately prior to loan closing, the FmHA or its successor agency under Public Law 103-354 official responsible for closing the loan(s) will review the file for compliance with Agency regulations.

[53 FR 30392, Aug. 11, 1988, as amended at 56 FR 67483, Dec. 31, 1991; 58 FR 26682, May 5, 1993]

§ 1945.190 Revision of the use of EM loan funds.

(a) *Requirements.* Loan approval officials or their delegates are authorized to approve changes in the purposes for which loan funds were planned to be used, provided:

(1) The loan, as changed, is within the respective loan approval official's authority.

(2) Such a change is for an authorized purpose and within applicable limitations.

(3) Such a change will not adversely affect either the feasibility of the operation or the Government's interest.

(4) Such a change is approved in advance of the loan funds being used for the new purpose(s).

(b) *Additional authority.* The State Director may delegate additional authority to approval officials to approve certain kinds of changes in the use of loan funds by issuing a State Supplement describing such changes, provided prior approval is obtained from the National Office.

(c) *Revisions.* When changes are made in the use of loan funds, no revision will be made in the repayment schedule on the promissory note. Appropriate changes with respect to the repayment will be made in table K of Form FmHA or its successor agency under Public Law 103-354 431-2 (and, if needed, on Form FmHA or its successor agency under Public Law 103-354 1962-1) and will be initiated by the borrower. The County Supervisor will also make appropriate notations in the "Supervisory and Servicing Actions" section of Form FmHA or its successor agency under Public Law 103-354 1905-1, "Management System Card—Individual."

§ 1945.191 [Reserved]

§ 1945.192 Loan servicing.

Loans will be serviced under subpart A of part 1962 and subpart A of part 1965 of this chapter.

§ 1945.193-1945.199 [Reserved]

§ 1945.200 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0090. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 1 hour per response, with an average of .58 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork

Reduction Project (OMB #0575-0090), Washington, DC 20503.

[56 FR 24682, May 31, 1991]

EXHIBITS A-C TO SUBPART D
[RESERVED]

EXHIBIT D TO SUBPART D—EMERGENCY
LOANS FOR CITRUS GROVE REHABILITATION AND/OR REESTABLISHMENT

I. *General:* Emergency (EM) loans may be made for rehabilitation and/or reestablishment of citrus groves, in areas which are determined not to be freeze prone areas, subject to the requirements of this subpart, except as modified and supplemented herein. This exhibit shall be effective on February 22, 1985 for citrus growers who have applications pending or who file applications in the future.

A. *Authority.* The authorizations contained in this exhibit provide the criteria to be used in (1) determining the feasibility of a request for an EM loan to rehabilitate and/or reestablish a citrus grove(s) and (2) establishing the dollar amount of physical losses to be compensated in a single EM loan and disbursed in future advances over a period of up to 5 years.

B. *Policy.* It is the policy of FmHA or its successor agency under Public Law 103-354 to make EM physical loss loans to citrus growers under this exhibit, provided their citrus groves can be reestablished or rehabilitated with the EM funds advanced over a period not to exceed 5 years. If additional funds are needed and a longer recovery period is required, the applicant must plan at the outset to obtain the additional financing needed from either his/her own cash flow resources or from another lender(s), since FmHA or its successor agency under Public Law 103-354 has no authority to provide any subsequent EM physical loss loans based on the same disaster.

II. *Program Objectives:* The objective for making EM loans to rehabilitate or reestablish citrus groves is to enable eligible applicants to restore their damaged citrus groves to normal production, provided (1) the proposed citrus operation can be reestablished on a reasonably sound basis; and (2) the rehabilitated citrus grove(s) will afford long range prospects for a reasonably successful operation.

III. *Definitions:*

A. *Grove rehabilitation* means the renovation of an existing grove, made necessary because of severe damages to trees resulting from a natural or major disaster occurring in a designated/declared county(ies).

B. *Grove reestablishment* means the planting of new trees to replace those that were killed or damaged beyond economic rehabilitation, made necessary because of severe damages

resulting from a natural or major disaster occurring in a designated/declared county(ies). (Both paragraphs III A and III B involve real estate development which will require more than one year to complete. Normally 3-5 years will be required for groves to become productive again under these two types of development procedures.)

C. Building new buildings, repairing existing buildings and improving chattels are *not* included in either of these definitions.

IV. *Eligibility*: Sections 1945.163 and 1945.175 of this subpart are supplemented to the extent that EM loan may be made, under the provisions of this exhibit, only to otherwise eligible applicants who are owner-operators of citrus groves. To be eligible, applicants must:

A. Project, at the outset, realistic annual plans of operation for the total farming operation, showing positive cash flows. These plans will be prepared by the County Supervisor and the applicant/borrower for each year of the adjustment period, until the citrus grove(s), as projected, is brought into profitable production.

B. Provide verification of income from other farming enterprises and/or dependable off-farm income in sufficient amount to cover all family living expenses and all farm operating expenses not related to the rehabilitation or reestablishment of the citrus grove(s) to be financed by FmHA or its successor agency under Public Law 103-354.

C. Limit their request for an EM physical loss loan to the actual physical losses sustained, which will not exceed the value of the established grove (trees and land), as appraised on the day before the disaster occurred, or one year and one day before the disaster designation was requested by a State Governor or an FmHA or its successor agency under Public Law 103-354 State Director, whichever date has the higher value, *minus* the present market value of the land and any remaining trees. The maximum EM loan limit of \$500,000 per borrower for each designated disaster as prescribed in §1945.163(d) of this subpart, will prevail.

V. *Loan Purposes*: EM loans for citrus grove rehabilitation and/or reestablishment may be made to eligible applicants for the purposes authorized by Section 1945.166 of this subpart, including the following:

A. Operating purposes. Payment of:

(1) Hired labor, not including operator's own labor.

(2) Actual cost of pruning trees and top grafting.

(3) Purchase of fertilizer, herbicides and fungicides.

(4) Actual cost of land preparation and cultivation.

(5) Machinery and equipment maintenance, repair and replacement, as needed to sustain the citrus enterprise only.

(6) Actual cost of fuel associated with the citrus enterprise. (For operation of machinery, irrigation systems, frost protection, etc.).

(7) Accrued interest on outstanding citrus operation debt.

(8) Real estate taxes and real property insurance premiums.

(9) Miscellaneous operating costs associated with the citrus enterprise.

B. Real Estate purposes. Payment of:

(1) Hired labor, not including operator's own labor.

(2) Removal of destroyed trees and debris.

(3) Land preparation.

(4) Purchase and planting of replacement trees.

(5) Secured and unsecured debts incurred during the disaster year as related to the citrus enterprise.

(6) Miscellaneous expenses directly related to long term improvement of the citrus grove(s) rehabilitation and reestablishment.

VI. *Loan Limitations*: Loan funds will *not* be approved or advanced for:

A. Family living expenses.

B. Operating or real estate expenses not directly related to the rehabilitation and/or reestablishment of the citrus grove(s) damaged or destroyed by the declared/designated disaster.

VII. *Rehabilitation and/or Reestablishment Requirements*: Citrus growers receiving EM loans under this exhibit will rehabilitate and/or reestablish their damaged or destroyed citrus groves for production of similar type(s) citrus crops grown during the disaster year. The applicant/borrower will also agree to replant or top graft the trees, as necessary, with a variety(ies) of trees recommended by the Cooperative Extension Service. This will become a condition of loan approval and will be inserted in Item 41 of Form FmHA or its successor agency under Public Law 103-354 1940-1, "Request for Obligation of Funds." The replacement citrus trees and any scion wood used for budding or top grafting must be "Certified," in writing, as being disease free and/or "Registered" as being true to variety by the selling nurseryman or other supplier.

VIII. *Rates and Terms*: See §1945.168(b) and FmHA Instruction 440.1, exhibit B (available in any FmHA or its successor agency under Public Law 103-354 office). Section 1945.168 of this subpart is hereby modified, authorizing future advances of EM loans funds to be disbursed over a period of up to 5 years, when such loan funds are used to rehabilitate and/or reestablish a citrus grove(s). EM loans may have reduced annual installments scheduled, of at least partial interest, for up to 5 years. However, such reduced installments will not be scheduled longer than the amount of time projected as being needed to bring the citrus grove(s) back into profitable production. After the adjustment period, the

promissory note may describe a graduated schedule of annual installments to coincide with projected increasing cash flow. A State Supplement will be issued setting forth several examples of a 5-year adjustment period showing scheduled annual installments.

The maximum repayment period will not exceed 30 years. In cases where successive natural disaster losses severely affect the total farming operation, loans may be rescheduled with a new period of adjustment, provided subparagraphs A and B of paragraph IV of this exhibit can continue to be met.

IX. *Security Requirements:* Section 1945.169 of this subpart is hereby modified to show that the EM loans made for citrus grove rehabilitation and/or reestablishment will be secured by the following collateral and lien positions:

A. A first lien on the citrus crop being brought into production;

B. The best lien obtainable on real estate on which the citrus is to be grown, having sufficient collateral equity to fully secure the EM loan, based on the per acre appraised value of the citrus grove(s) as established on the day before the disaster occurred, or one year and one day before the disaster designation was requested by a State Governor or an FmHA or its successor agency under Public Law 103-354 State Director, whichever date has the higher value;

C. The best lien obtainable on all other assets owned by the applicant/borrower, when an individual proprietorship. When the applicant/borrower is an entity, all assets owned by the entity and the individual(s) as a member, partner or stockholder of the entity will be taken as collateral; and

D. Full personal liability of all principal members, partners or stockholders of the borrower entity.

X. *Loan Approval and Administrative Determinations:* Before an EM loan is approved under this exhibit, the loan approval official must make the determinations required by §§ 1945.182 and 1945.183 of this subpart, and the following additional determinations:

A. That postponement of loan repayment is needed to accomplish projections of positive cash flows for each year of postponement; and as necessary, repayment of the loan, except for at least an annual partial payment(s) of interest, will be postponed for up to 5 annual installments with a graduated schedule of annual installments after the adjustment period; and a maximum repayment term, as justified by realistic income and expense projections, but not in excess of 30 years from the date of promissory note, will be given.

B. That multiple future advances of loan funds are scheduled over the period of years needed to bring the citrus grove(s) into profitable production, but not in excess of 5 years.

C. That annual plans of operation and accompanying cash flow statements are scheduled for review and revision annually to reflect current circumstances, and a determination made and documented by the FmHA or its successor agency under Public Law 103-354 servicing official that recovery of the citrus operation is still feasible, before each future advance is disbursed.

D. That the projected annual plans show the initial and all future EM advances will be fully secured by equity in the farm real estate to be rehabilitated or reestablished, and which will serve as collateral for the EM loan, using the "as improved" appraised value.

XI. *Understandings and Agreements with Applicant:* In the event a determination is made, at any time during the recovery period, that the operation is no longer economically feasible (cannot meet its cash flow requirements), the undisbursed future advances will be cancelled by the County Supervisor after consultation with the District Director; and appropriate servicing actions will be pursued. Also, the grove rehabilitation and/or reestablishment will be considered "complete" when profitable production is achieved. If this occurs ahead of schedule, the remaining future advances will be cancelled and consideration given to rescheduling the unpaid EM loan balance. The County Supervisor may cancel a future advance(s) after consultation with the District Director and the State Director. This will be acknowledged by the borrower(s) by initialling changes in the Promissory Note, Form FmHA or its successor agency under Public Law 103-354 1940-17, as follows: on page 1 delete the second sentence of the third paragraph from the bottom of the page which reads, "Approval by the Government will be given provided the advance is requested for a purpose authorized by the Government."; and add a footnote at the bottom of page 1 referring to page 3, where the following statement will be inserted in the blank space available. "The Government will approve advances of loan funds, which were not advanced at loan closing, provided the funds will be used for authorized purposes, the borrower has complied with all loan agreements, FmHA or its successor agency under Public Law 103-354 determines that the operation is economically feasible, and FmHA or its successor agency under Public Law 103-354 determines that FmHA or its successor agency under Public Law 103-354 loan funds are needed." Each Promissory Note thus modified will be initialled at both changes by the borrower(s) at the time of loan closing and an explanation of the implications of the changes given to the borrower(s) by the escrow agent or the FmHA or its successor agency under Public Law 103-354 official conducting the closing.

XII. *Issuance of State Supplement:* A State Supplement will be issued to provide guidance on appraising citrus groves, and projecting Farm and Home Plans or Coordinated Financial Statements during the period of grove rehabilitation and/or reestablishment. This Supplement will also contain examples of how loan installments may be scheduled during the period of adjustment. (See paragraph VIII of this exhibit.)

[50 FR 7567, Feb. 22, 1985, as amended at 50 FR 48176, Nov. 22, 1985; 51 FR 13574, Apr. 21, 1986; 53 FR 30412, Aug. 11, 1988]

PART 1946—MEDIATION

Subpart A—Agricultural Loan Mediation Program

Sec.

- 1946.1 General.
- 1946.2 Definitions.
- 1946.3 Process for certification.
- 1946.4 Matching grants.
- 1946.5 Monitoring compliance and penalty for non-compliance.
- 1946.6 Nondiscrimination.
- 1946.7 Environmental requirements.
- 1946.8 Delegation of authority.
- 1946.9–1946.49 [Reserved]
- 1946.50 OMB control number.

AUTHORITY: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

SOURCE: 53 FR 32599, Aug. 26, 1988, unless otherwise noted.

Subpart A—Agricultural Loan Mediation Program

§ 1946.1 General.

(a) This subpart provides procedures for administration of the agricultural loan mediation program whereby a State may be certified by the Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 as a qualifying State for purposes of FmHA or its successor agency under Public Law 103-354 and other USDA agencies' participation in the program. Such certification is also necessary for a State to receive Federal matching grant funds to be used for the operation and administration of the State's agricultural loan mediation program.

(b) FmHA or its successor agency under Public Law 103-354 will participate in mediations conducted pursuant to a State's agricultural loan mediation program under the same terms and conditions applicable to agricul-

tural creditors generally, and will cooperate in good faith in such mediations by complying with requests for information and analysis, and in presenting and exploring debt restructuring proposals, wherever feasible, when that State is and remains a qualifying State as defined in § 1946.2(b) of this subpart.

§ 1946.2 Definitions.

(a) *Agricultural Loan Mediation Program.* A State authorized or administered program which meets the requirements for certification outlined in § 1946.3(a)(2) (i) through (v) of this subpart.

(b) *Qualifying State.* A State which has been certified by FmHA or its successor agency under Public Law 103-354 as having an agricultural loan mediation program which meets the requirements outlined in § 1946.3(a)(2) (i) through (v) of this subpart, provided the State's certification has not expired or been withdrawn under the provisions of § 1946.5(c) of this subpart.

§ 1946.3 Process for certification.

(a) No later than August 1, of each year, the Governor of a State or Head of a State agency designated by the Governor of a State must submit a written request to the FmHA or its successor agency under Public Law 103-354 if the State wishes to be certified as a qualifying State for the purposes of FmHA or its successor agency under Public Law 103-354 participation in the State's program and for the State to receive a matching grant to be used for the operation and administration of the program within the State during the fiscal year commencing October 1 of that same year. The request must include:

(1) A description of the State's agricultural loan mediation program.

(2) Documentary information to support the request and a certification by the Governor or Head of a State agency designated by the Governor that the State's agricultural loan mediation program:

(i) Provides for mediation services to be provided to producers, and their creditors, that, if decisions are reached, result in mediated, mutually